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**EXTRAORDINARY**

**PART II—Section 3**

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**No 88] NEW DELHI, THURSDAY, MARCH 29, 1956**

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**ELECTION COMMISSION, INDIA**

**NOTIFICATION**

*New Delhi, the 6th March 1956*

**S R O. 761**—Whereas the election of Shri Bhagwan Dutta Shastri and Shri Randawan Singh, as members of the House of the People, from the Shahdol Sidhi constituency of that House, had been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by (1) Shri Tilakraj Singh son of Shri Gulab Singh resident of Waidhan, District Sidhi (2) Shri Bisheshwar Singh son of Bhondur Singh, resident of Bhagra Mamla, Tehsil Bandhargarh District Shahdol and, (3) Shri Bhagwandas, son of Shri Dayalal, resident of Shahdol,

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said election petition has in exercise of the powers conferred on it by section 109 of the said Act granted leave to the petitioners to withdraw the said petition,

And whereas the said Tribunal in pursuance of the provisions of clause (c) of sub section (3) of section 110 of the said Act, allowed Shri Badri Narayan Singh, son of Thakur Baldeo Singh resident of Bhuinbandh, Shahdol to be substituted as petitioner in place of the original petitioners

And whereas the said Tribunal has, in pursuance of the provisions of section 103 of the said Act, sent a copy of its Order to the Commission

And whereas the Supreme Court on an appeal filed by the Respondent No 1 dismissed the same by its Order dated the 17th February, 1956,

Now therefore, in pursuance of the provisions of section 108 of the said Act the Election Commission hereby publishes the said Order of the Tribunal

**BEFORE THE ELECTION TRIBUNAL VINDHYA PRADESH AT REWA**

**ELECTION PETITION No 8/187 of 1952**

Tilakraj Singh and others original petitioners, now substituted by  
Shri Badri Narayan Singh S/o Thakur Baldeo Singh R/o Bhuinbandh,  
Shahdol elector No 607 in ward No 3 of Shahdol Municipality—  
*Petitioner*

*Versus*

- 1 Bhagwan Dutta Shastri aged about 30 years son of Hari Bhushan, resident of Katra Rewa
- 2 Randawan Singh, son of not known resident of Gijawar P O Majhauil, District Sidhi

3. Lala Ram Ratan Gupta aged about 45 years, son of Lala Behari Lal, resident of 20/204 Chatai Mohal, Kanpur.
4. Purnamal aged about 37 years, son of Dhanraj, resident of village Kotma, P.O. Kotma, District Shahdol.
5. Rajiva Lochan, son of Ramnarain Agnihotri, resident of village Rajarwar, P.O. Madhogarh, District Satna, V.P.
6. Premji Nigam, son of Madho Prasad Nigam, aged about 27 years, resident of town Shahdol, District Shahdol—*Respondents*.

## CORAM:—

Shri E. A. N. Mukarji, B.A., LL.B.—*Chairman*.

Shri U. S. Prasad, B.A., B.L.—*Member*.

Shri J. K. Kapoor, B.A., LL.B.—*Member*.

Lal Yadendra Singh, Advocate, assisted by Lal Ramesh Pratap Singh, Pleader, appeared for the petitioners.

Shri Debi Prasad Pleader, appeared for respondent No. 1 and Shri Keshau Prasad, Pleader, for respondent No. 2.

## JUDGMENT

This is a petition presented by three electors in the Shahdol-Sidhi double member constituency, calling in question the election of two members to the House of the people from such constituency. The original petitioners Tilakraj Singh, Bisheshar Singh, and Bhagwan Dass have been since substituted by Badri Narayan Singh. There are six respondents all of whom were duly nominated candidates at the election.

Respondent No. 1 (Shri Bhagwan Dutta Shastri) No. 3 (Lala Ram Ratan Gupta) and No. 4 (Purnamal) were duly nominated for the general seat and respondent No. 2 (Randaman Singh) for the Scheduled Tribes seat.

There being no other candidate for the Scheduled Tribes seat, respondent No. 2 was declared as duly elected to such seat and polling took place for the general seat only on 11th, 13th, 15th, 17th and 19th January, 1952. At the counting of votes the following was the result:—

Respondent No. 1	polled	71,589 votes.
Respondent No. 3	polled	56,585 votes.
Respondent No. 4	polled	34,990 votes

It is alleged in the petition that the result of the election was materially affected by the improper acceptance of the following nomination papers:—

- (a) On 8th December, 1951, the nomination paper of respondent No. 1 was wrongly accepted because he was not registered as an elector in the elector roll of Shahdol-Sidhi constituency and he failed to produce a certified copy of any entry in the electoral roll showing that his name was so included.
- (b) Respondent No. 4 was a member of the Firm styled as Ramrikhdass Dhanraj of Kotma, District Shahdol, which firm was a quota-holder-of cloth and held a licence from Government for distribution of the same. He was a shareholder in such firm, which had entered in a contract with the State Government for the supply of rice to the Union Government. Moreover, his nomination paper did not bear his signature. For these reasons it is alleged that his nomination paper was improperly accepted.

It is further alleged that the result of the election has been materially affected by the improper rejection of the following nomination papers:—

- (a) Shri Baboo Lal Udanias nomination paper was rejected on the ground that he was a counsel for the State Railway and as such he held an office of profit and was disqualified from being elected as a member. The improper rejection of his nomination paper materially affected the result of the election because he had every hope of securing a majority and many of the votes polled for respondent No. 1 would not have been cast for him, if Shri Baboo Lal Udanias had been allowed to contest the election.

- (b) The nomination paper of Shri Dip Narain was rejected on the frivolous ground that the name of the constituency was wrongly entered in the nomination paper as "Shahdol-Sidhi-Maunganj Constituency".
- (c) The nomination paper of Rajkishore Shukla was wrongly rejected on the ground that it was incomplete when he signed his assent and there was no deposit of the requisite sum.

It is alleged that the election was not a free election because the election of respondent No. 1 was procured and induced by the following corrupt and illegal practices, which have materially affected the result:—

- (1) Respondent No. 1 himself, and through his agents, unduly influenced the electors of Maunganj tehsil and of district Sidhi by representing to them that whosoever did not vote for him, who was the spiritual Guru, would be committing a sin and would go to hell.
- (2) In the villages of Amarkantak and Harswah polling station in Pushprajgarh area, it was given out by respondent No. 1 and his agents that if votes were polled in the ballot boxes, bombs, which were concealed therein, would wipe out the entire population and this fact prevented a large number of voters from exercising their franchise.
- (3) It was declared at Pushprajgarh tehsil and Burhar area that if two electors, being husband and wife, would cast their votes in different ballot boxes, Government would separate them forcibly. This led the women voters to abstain from voting.
- (4) In the villages of polling station Negua and Birhauili, Gond electors were paid large sums of money to drink liquor and perform Karma dance and while in intoxicated condition the oath of 'Madain Dai' was administered to them to the effect that they would vote for no one else besides respondent No. 1.
- (5) Systematic appeals were made to the voters of Gopadbanas and Singrauli tehsils of Sidhi district, and Maunganj tehsil of Rewa district, where the majority of the electors were Brahmans, that Brahmans should not vote for the Banlyas, namely, respondents Nos. 2 and 3 (evidently a mistake for respondents Nos. 3 and 4), but should vote for a man of their own community. Particulars of this corrupt practice are given in list 'A'.

The election of respondent No. 1 is also challenged on the ground that motor trucks and bullock carts were used to bring voters to the Kotma polling station, about which details are given in list 'B' and also that false and defamatory statements were published by respondent No. 1 and his agents concerning the conduct and character of respondents Nos. 3 and 4, as detailed in list 'C'.

The following illegal practices are mentioned as vitiating the election of respondent No. 1:—

- (1) Meetings were held by respondent No. 1 and his agents in the villages of Lahsua, Singhaura, Jaltehri and Pondi of tehsil Pushprajgarh, in places where intoxicating liquor was sold to the public. Particulars are given in list 'D'.
- (2) Hand bills and circulars and leaflets were issued which did not bear the names and addresses of printers and publishers. Copies of certain leaflets are attached to the petition and details are given in list 'E'.

It is contended that election of respondent No. 1 is also void for non-compliance with the provisions of the R.P. Act, and Rules and Orders made thereunder. Instances of such non-compliance are mentioned as follows:—

- (1) Identity slips were issued to the voters by the Returning Officer, through the agency of Patwaris in district Shahdol, and canvassing was done by them for respondents Nos. 1 and 3.
- (2) Ballot papers not issued for Bijuri and Katkona polling stations were found in the ballot boxes of these polling stations.
- (3) The Presiding Officer at Amalia polling station did not place the ballot boxes in the proper order and declared a large number of ballot papers as invalid.
- (4) At Sakola polling station canvassing was systematically carried out within 100 yards of the polling station and also inside the polling booth.

- (5) Ballot papers received from polling stations Bījuri, Thangaon, and Katkona and Bahera Bandh were other than those authorised for issue to the electors at such polling stations, and statements in form No. 10 were not properly filled up.
- (6) Polling at Beohari Khas polling station was stopped at 4 p.m., i.e., half an hour before the fixed time and a large number of voters had to go back.
- (7) The return of election expenses filed by respondent No. 1 is false in material particulars as given in list 'F'.

On the above allegations the petitioners claim the following reliefs:—

- (a) That the election is wholly void.
- (b) That cost of the petition be awarded to the petitioners.
- (c) Any other relief to which petitioners may be entitled.

The petition has been contested by respondent No. 1 alone although respondent No. 2 put in a written statement that he was properly declared elected and that he had no knowledge about the truth of the allegations of the corrupt practices etc. He contended that the prayer for a declaration that the whole election is void cannot be granted because his election was complete under section 54 of the R.P. Act, 1951, before the election for the general seat took place.

In the written statement filed by respondent No. 1 the allegations made against him are denied. It is pleaded that his nomination paper was correctly accepted. It is similarly pleaded that the nomination paper of respondent No. 4 was correctly accepted. It is contended that the nomination papers of Shri Baboo Lal Udania, Dip Narain and Rajkishore Shukla were properly rejected.

Respondent No. 1 denies categorically all allegations of corrupt and illegal practices made against him and pleads that there has been no breach of the provisions of the R.P. Act or Rules and Orders made thereunder. It has been further contended that the election has been very fair and respondent No. 1 won by a large majority and hence the election cannot be set aside. It is stated that the allegations in the petition have been made in collusion with Shri Ram Ratan Gupta.

On the basis of the pleas of both parties the following issues were framed:—

#### ISSUES

*Issue No. I*—Are the facts regarding dates of nomination, scrutiny, withdrawal and declaration of election, as given in paras. 1 and 2 of the petition, correct?

*Issue No. II*—(a) Was the nomination paper of respondent No. 1 improperly accepted on the ground that he was not registered in the electoral roll of Shahdol-Sidhi constituency, nor did he produce a certified copy of the entry of his name in the electoral roll, at the time of presentation of the nomination paper?

(b) Was the nomination paper of respondent No. 4 improperly accepted because he was a member of the firm styled as Ramrikhdas Dhanraj which firm was a quota-holder of cloth, holding a licence for distribution of the same, by Government, and respondent No. 4 had a share in it, and also because the nomination paper of respondent No. 4 did not bear his signature?

(c) Has the result of the election been materially affected by such improper acceptance of the nomination papers of respondents Nos. 1 and 4.

*Issue No. III*—Were the nomination papers of Shri Baboo Lal Udaniya, Shri Dip Narain and Shri Rajkishore Shukla wrongfully rejected, and has the result of the election been materially affected thereby, and if so, what is the effect?

*Issue No. IV*—(a) Did respondent No. 1 himself and through his agents unduly influence the electors of tehsil Mauganj and of district Sidhi by representing to them that whosoever did not vote for him, who was the spiritual Guru would go to hell?

(b) Was it propagated by respondent No. 1 and his agents in the villages of Amarkantak and Harswah polling stations in Pushprajgarh area, that if votes be polled in ballot boxes the bombs, which were concealed therein, would wipe out the entire population, and a large number of voters refrained from voting for fear of being killed?

(c) Did the women electors of Pushprajgarh tehsil and Burhar areas abstain from voting on account of fear as a result of declaration of respondent No. 1 and his agents that, if a husband and wife would cast their votes in different ballot boxes, Government would separate them forcibly?

(d) Did respondent No. 1, his agents and workers etc. pay sums of money to Gond electors of villages in polling stations of Nebua and Birhauil on 15th and 16th January, 1952 and on 18th January 1952 respectively and in the villages of Nawa Tola on the 15th January, 1952, for performing Karma dance and drinking liquor and in that intoxicated condition they were made to swear by 'Madain Dal' and 'Bara Deo' that they must not vote for any one except respondent No. 1?

(e) Were systematic appeals made to the voters of Gopadbanas and Singrauli tehsils of Sidhi district and Mauganj tehsil of Rewa district, where the majority of voters were Brahmans, that Brahman voters should not vote for Baniyas like respondent Nos. 3 and 4 (in the petition Nos. 2 and 3 have been wrongfully written for Nos. 3 and 4) and that Brahmans should vote for a man of that community?

(f) Has the election not been a free election in as much as the election of respondent No. 1 was procured and induced by above mentioned corrupt practices?

*Issue No. V.*—(a) Were motor trucks and bullock carts used to bring voters to Kotma polling station?

(b) Were false and defamatory statements published by respondent No. 1 and his agents concerning the character and conduct of respondent Nos. 3 and 4, and were circulars and leaflets, particulars of which are given in list 'C' issued by them?

(c) Is the election of respondent No. 1 void on account of these corrupt practices?

*Issue No. VI.*—(a) Is the election of respondent No. 1 void because of the following illegal practices:—

(a) Meetings were held by respondent No. 1 and his agents in villages Lahsua, Singhaura and Jaitehri and Pondi in tehsil Pushprajgarh, in places where intoxicated liquor was sold to the public?

(b) Hand bills and circulars etc. were issued having reference to the election of respondent No. 1 which did not bear on their face the names and addresses of the printers and publishers?

*Issue No. VII.*—Is the election of respondent No. 1 void for non-compliance of the Representation of Peoples Act and the Rules and Orders made thereunder, as alleged in para. 11 (wrongly typed as para. 12 in the petition)?

*Issue No. VIII.*—Is the return of expenses filed by respondent No. 1 false in material particulars, and if so, what is the result?

*Issue No. IX.*—Is the election of respondent No. 2 not liable to be declared void even if the whole election is declared to be void?

*Issue No. X.*—To what relief if any, is the petitioner entitled?

#### FINDINGS

As requested by the petitioners and the contesting respondent, the evidence in this case and in case No. 7/185 of 1952 has been recorded together, and the questions of fact that arise in both these cases, are almost the same. It will therefore be sufficient for us to refer to our judgment in petition No. 7/185 (which is appended herewith as Appendix A) and our findings on the issues which are common to both the cases are the same as in relevant portion of the judgment marked as Appendix A.

With regard to other issues which arise in this case, only, we will deal with them fully in this judgment.

*Issue No. I.*—The dates of scrutiny, nomination, withdrawal and declaration of result, as mentioned in paras. 1 and 2 of the petition, have not been formally admitted by respondent No. 1, but their correctness has not been seriously contested, and the record relating to election shows them to be correct. We therefore find this issue in favour of the petitioners.

*Issue No. II.*—This issue covers the allegation of the petitioners contained in para. 6 of the petition, to the effect that respondent No. 1's nomination paper was wrongly accepted because he was not registered as an elector in the Shahdol-Sidhi constituency, and that he had failed to produce a copy of the electoral roll in which his name was so included. It is further alleged that respondent No. 4 (Pooranmal) was a member of the firm called Ramrikh Das Dharamdas, which firm was a quota holder of cloth and held a license from Government for distribution of the same and further that respondent No. 4 had a share in such firm. Validity of the nomination paper of respondent No. 4 is also challenged on another ground, namely, that it did not bear his signature.

These facts are denied in the written statement of respondent No. 1. At the time of arguments the allegations covered by this issue have not been pressed. The nomination file Ex. P.W. 76/15, shows that Shri Bhagwan Dutta Shastri respondent No. 1 had put in two copies of the relevant entry in the electoral roll showing that he is an elector. These copies are Exs. P.W. 76/15-a-1, and P.W. 76/15-b-1. We, therefore, find that respondent No. 1's nomination paper was rightly accepted.

As regards respondent No. 4, Shri Pooranmal, his nomination paper is Ex. P.W. 76/15 which was accepted, and subsequent to the decision, certain objections regarding Pooranmal's being a share holder in the firm named Ramrikh Dass Dharam Dass etc. were put in on behalf of Shri Ram Ratan Gupta candidate. There is nothing on the record to support these objections. We accordingly hold that these issues have not been proved.

We thus find that both parts of this issue stand as unproved and we, therefore, decide them against the petitioners.

*Issue No. III.*—This issue covers the allegations contained in para. 7 of the petition. It is alleged in this para. that the nomination papers of Shri Baboo Lal Udaniya, Dip Narain and Rajkishore Shukla were wrongly rejected and such rejection has materially affected the result of the election.

As regards Shri Baboo Lal Udaniya, the objection is that his rejection was based on the ground that he was a counsel for the State Railway, and as such, held an office of profit, which disqualified him from being elected to the House of the People.

Regarding this matter we have letters on record which show the nature of contract between the B.N. Rly. (as it was then name) and Shri Baboo Lal Udania it is clear from these letters that Shri Baboo Lal Udania was appointed as a non-retained pleader for the Burhar courts, and the terms of his appointment are clear from the agreement, copy of which shows that Shri Baboo Lal Udaniya was bound to appear in the court "when authorised" and he was to be paid fees for such appearance with the rates fixed in the agreement. For purpose of reference the letter of appointment has been marked Ex. A/1 and the copy of agreement as X-A/2. We have to see from the nature of the terms of appointment of Shri Baboo Lal Udania as a Railway counsel, whether it can be called an office of profit.

It is clear that Shri Baboo Lal Udania was a non-retained counsel i.e. no fixed salary or honoraria was paid to him for such services. He was to be engaged from time to time, whenever he was specially authorised to represent the Railway in the courts at Burhar, and was to be paid fees for each such service rendered, on a fixed scale. It has been held in the judgment of the Election Tribunal, Allahabad, printed in Gazette of India, dated 21st September, 1953 at page 295 that the case of a non-retained Government Railway Pleader does not fall either under Article 102(1)(a) of the Constitution, or under section 7(e) of the R.P. Act and hence such a Pleader approved by a Government Railway was therefore not disqualified for being a member of a House of Parliament.

We are in entire agreement with the view enunciated in the said judgment and we hold that Shri Baboo Lal Udania's appointment as a Railway counsel on the terms shown on record do not amount to his holding an office of profit and hence do not result in any disqualification for being elected to the House of the People. The order of the Returning Officer rejecting Shri Baboo Lal Udaniya's nomination paper Ex. P.W. 76/15D-1, on the ground that he was a Railway counsel, was, therefore, wrong. It may be noted that Shri Baboo Lal Udaniya was the official Congress candidate and the only candidate put up by the Congress for this election.

The next nomination paper mentioned in para. 7 of the petition is that of Shri Dip Narain, son of Pt. Jagdambika Prasad of Umaria. His nomination paper was rejected on the ground that in Col. No. 1 of the nomination paper (Ex. P.W.

76/15C) the name of the constituency is given as "Shahdol-Sidhi Mauganj constituency" but in the Delimitation Order there is no such constituency named. Copy of the Delimitation Order relating to this constituency is marked Ex-A/3. It gives the name of the constituency as "Shahdol-Sidhi" and the extent of the constituency as "Shahdol and Sidhi districts and Mauganj tehsil of Rewa district". Moreover, the electoral rolls contain the same heading as the "extent" of the constituency mentioned in Delimitation Order, namely "Shahdol-Sidhi-Mauganj constituency". Shri Dip Narain Pathak entered in column No. 1 of the nomination paper, the name of the constituency as given in the column showing the extent of the constituency in the Delimitation Order and as entered on the first page of the elector roll. There could be no doubt created about the identity of the constituency by the addition of the words 'Mauganj' because in fact Mauganj was included in Shahdol-Sidhi constituency by the Delimitation Order, and hence the addition of the words 'Mauganj' could not be mislead any one. It was only a technical difference, if any, from the name of the constituency as such. The law as well as the rulings at this point are clear and show that nomination papers should not be rejected for such technical defects. See section 36 sub-section 4 of the Representation of the People Act, 1951, where it is given "that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character."

Thus it is clear that a trivial misdescription like this cannot invalid to any nomination paper specially because, far from creating any doubt or misgiving regarding the identity of the constituency, it describes it more fully in accordance with the Delimitation Order.

There are several judgments in which this view has been enunciated. For example in the case reported in Indian Election Cases 1935-50 by Doabia, Vol. II, page 302, the name of the constituency was described as "Multan Division Towns Muslim constituency" instead of "Multan Division Town Mohammadan constituency" and it was held that this error was insignificant. Similarly in a case reported in Indian Election Cases by Doabia Vol. II at page 411 the name of the constituency was "North Cuttack Sadar General Constituency" but in the nomination paper it was entered as "North Cuttack Sadar General and Rural constituency". Held that it was not a serious mistake and that it was in substantial compliance with the rules. In another case reported in Sen & Poddar at page 883, the 2nd Election Petition Commission, Punjab, held that the addition of the words "Lahore Municipality and Cantonment" to the name of the constituency did not make the nomination paper defective.

We accordingly find that the order rejecting the nomination paper of Dip Narain Pathak was also wrong.

The third nomination paper which had been rejected was that of Shri Rajkishore Shukla. The order of rejection is Ex. P.W. 76/15G. This shows that the two grounds on which the nomination paper was rejected were (1) that the deposit had been made in the name of Ramgopal Verma and (2) that the nomination paper had been signed by the candidate before the signatures of the proposer and seconder were affixed.

The Returning Officer considered that the deposit should have been made by the candidate or the receipt should have mentioned that some one was making it on his behalf. He also thought that the nomination paper was incomplete because the candidate had not signed it before obtaining the signatures of the proposer and seconder.

The receipt attached to this nomination paper shows that the money was deposited by Ramgopal Verma on 5th December 1951. Section 34 of the R.P. Act, 1951, provides that the candidate cannot be deemed to be duly nominated unless he deposits or causes to be deposited the necessary amount. This section nowhere provides that the receipt must mention that it has been deposited on behalf of the candidate and we cannot read into the section words which do not exist in it.

Similarly in the case of nomination papers, section 33 provides that 'they must be presented at the proper time and place' after being completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons as referred to in sub-section 2 a proposer and seconder". In the present case there is no doubt that the nomination paper of Shri Rajkishore Shukla was complete when it was presented. The sequence in which these signatures were to be made is not laid down in this Act and the Returning Officer was wrong in considering that the candidate's signature had not been made at the proper time.

This view finds support from a judgment in the case of *Shrimati Shanta Debi Vaidya versus Shri Bashir Husain Zaidi* recorded in the Gazette of India (277), dated 28th October, 1953 at page 3290.

We are therefore of the opinion that the nomination paper of Shri Rajkishore Shukla was wrongfully rejected by the Returning Officer.

The second portion of this issue raises the question whether the result of the election has been materially affected by the wrongful rejection of the nomination papers of Shri Baboo Lal Udanla, Shri Dip Narain Pathak and Shri Rajkishore Shukla. We have noted above that in the case of Shri Baboo Lal Udanla, he was the only official Congress candidate and in fact the only Congress candidate at the election. So the rejection of his nomination paper would leave no Congress candidate in the field.

The relevant section of the R.P. Act on this question is section 100 sub-section 1(c) in which it is laid down that the Tribunal has to consider whether the result of the election has been materially affected by the improper acceptance or rejection of any nomination paper. In the present case we have found that the nomination papers of the three of the applicants were wrongfully rejected and the trend of the ruling over the past 20 years and more support the view that, in the case of wrongful rejection of a nomination paper, there is a very strong and almost un rebuttable presumption that the result has been materially affected and very strong and cogent evidence is required to rebut such presumption. In the Indian Election Cases by Sen & Poddar there are various judgments of Election Commissions and Tribunals starting from 1937, or even before that, which have been consistently subscribing to this view. Reference may be made to the following pages:—5(N.W.F.P., 1937), 74(Punjab), 110(Basti, U.P. 1937), 122(Batala Sikh Rural constituency, 1946), 288(Punjab, 1946), 490(Lucknow, 1946), 568(Moradabad, 1937), 604 (Multan, 1938), 715 (Rawalpindi, 1946) 763 (Sitapur, 1937). In the judgment recorded in the Gazette of India, dated 15th October, 1952 at page 2293 it was remarked that the improper rejection of nomination paper deprives the whole electorate of their right to vote for the candidate of their choice and the result of the election was materially affected, irrespective of the question of the possible success or failure of the candidate.

Similarly in the Gazette of India, dated 20th October, 1952 at page 2311 it was remarked that there was a general presumption of material effect and that nobody could foresee what would happen if the rejected candidate had been allowed to contest the election.

In another case reported in the Gazette of India, dated 27th November, 1952 at page 2485 it was held that the wrongful rejection materially affected the result even though the rejected candidate is said to have worked for another, as has been alleged in the present case. To the same effect are judgments recorded in Gazette of India, dated 5th December, 1952 at page 2527 (Election Tribunal, Patna), Gazette of India, dated 6th December, 1952 (Election Tribunal, Patiala, Pepsu), Gazette of India, dated 19th December, 1952 (Election Tribunal, Assam).

In the case of Hon'ble Shri Hukam Singh recorded in the Gazette of India, dated 20th December, 1952 it was held that the presumption of material effect in the case of wrongful rejection is almost incapable of rebuttal and that speculative evidence has no force.

In a more recent judgment recorded in Gazette of India, dated 7th April, 1954 (Election Tribunal, Delhi) at page 596 it is remarked that the presumption of material effect requires conclusive proof for rebuttal and that the question of the chances of success is not admissible. In the Gazette of India, dated 6th March, 1953 (Kapurthala Tribunal) at page 729 it was held that improper rejection raises a presumption of material effect and requires the strongest and most conclusive proof for rebuttal. A similar view was held by the Election Tribunal, Himachal Pradesh, in a judgment reported in the Gazette of India, dated 21st March, 1953, at page 889. In a judgment of the Election Tribunal, Nagpur, recorded in the Gazette of India, dated 29th July, 1953 at page 2558 it was also remarked that evidence adduced to rebut the presumption would be of speculative and conjectural nature. This judgment has been upheld by Hon'ble supreme Court of India. [See A.I.R. 1954 (S.C.) page 236].

We are in complete agreement with the view enunciated above, and we hold that in the present case the wrongful rejection of the nomination papers of Shri Baboo Lal Udanla, Shri Dip Narain Pathak and Shri Rajkishore Shukla raises a strong presumption that the result of the election has been materially affected and that such presumption has not been rebutted by any satisfactory evidence.



We have next to consider what would be the result of this finding. This we will discuss at length while deciding Issue No. IX

*Issue Nos. IV, V, VI, VII and VIII.*—Our findings on these issues are the same as in file No. 7/185 because they are based on the same evidence. The relevant portion of judgment in this case has been marked Appendix A and may be referred to for our decision on the several allegations contained in the petition. We have held by that judgment that several of the allegations of the petitioners have not been proved. They are among those covered by the issues now under consideration. We have however held that a systematic appeal was made by respondent No. 1 and his agents asking the voters to vote for respondent No. 1 on the ground of his caste, community and religion. This amounts to proof of a corrupt practice as defined in Section 123, sub-section (2), proviso (a)(i) and (ii) of R.P. Act, 1951.

We have also found that it has been proved satisfactorily that vehicles for the conveyance of electors to Alauha polling station were used by Shri Achhutanand with the connivance of respondent No. 1. This amounts to proof of a minor corrupt practice as defined in section 123(4) of the R.P. Act.

It has been found further that there is no proof of the falsity of the return of election expenses or of the commission of irregularities which would materially affect the result of the election.

*Issue Nos. IX and X.*—In the present case respondent No. 1 Shri Randaman Singh was the only candidate for the Scheduled Tribes seat whose nomination paper was held to be valid. Consequently he was declared elected forthwith and polling took place only for the general seat, as a result of which respondent No. 1 was declared elected. We have found in this case that the election of respondent No. 1 having been induced and obtained by corrupt practices and there having been wrongful rejection of several nomination papers, it is clear that his election cannot stand because the result has been materially affected by these wrongful rejections and corrupt practices. The question is whether the election of respondent No. 2 should also be set aside.

When as in the present case, a scheduled tribes candidate is declared elected unopposed without going to the polls, it appears to us to be opposed to the principles of natural justice to set aside his election simply because the election of the candidate for the general seat must be declared void on account of wrongful rejection of nomination papers and proof of corrupt practices. A perusal of sections 53 and 54 of the R.P. Act, 1951 would show that in case of the number of candidates being equal to the number of seats, the Returning Officer shall declare such candidates to be duly elected. In the present case this was so with regard to the Scheduled Tribes seat. We notice, however, that in the case of a casual vacancy the notification for bye-election is to be issued with regard to the particular seat only, whether it is for the general or for the Scheduled Tribes seat (see section 149 and 150 of R.P. Act, 1951). The intention of legislature therefore appears to be what is in consonance with natural justice namely, that if in case of a double-member constituency the candidate for one kind of seat is declared elected unopposed and the candidate for other kind of seat goes to poll then if there is some defect in or justification for setting aside such election, the election which has taken place as a result of the polling should alone be avoided.

We are not in agreement with their certain remarks made by the Nowgong Tribunal in their judgment published in the Gazette of India, dated 20th March 1953, at page 907 that the whole election could only be set aside and that since the Scheduled Tribes candidate was not a party no relief could be granted. These remarks are by way of *obiter dicta* and do not appear to us to be based on good law.

We are therefore of the opinion that the election of respondent No. 1 must be declared void and the election of respondent No. 2 should stand.

We only allow the petition to this extent that we declare the election of respondent No. 1 to be void and maintain the election of respondent No. 2.

Under the circumstances of the case we allow Rs. 100/- as costs to the petitioners as against respondent No. 1 Shri Bhagwan Dutta Shastri.

Announced.

(Sd.) E. MUKARJI, *Chairman.*

(Sd.) J. K. KAPOOR, *Member.*

(Sd.) U. S. PRASAD, *Member.*

## APPENDIX A

*Extract of findings of common issues from the judgment in Election Petition No. 7/185 of 1952, dated 26-4-1954*

*Issue No. III.*—The allegations forming the basis of this issue are contained in para. 12, sub-para. (a) to (g), full particulars whereof are detailed and amplified in paras. 1 to 6 of list 'B' as this is a long para. with a still longer list, it would be convenient to take each sub-para. of para. 12, along with the corresponding para. of list 'B', and to discuss the evidence adduced thereon separately.

In para. 12 of the petition it was alleged that respondent No. 1 himself and through his agents, canvassers, workers and supporters committed the corrupt practice of undue influence and the form of it as given in sub-para (a) was that—

“having induced the electors of tehsil Mauganj in Rewa district and that of entire district of Sidhi by giving out to them that it was a sin to vote for any one else but respondent No. 1 who was a spiritual Guru of the constituency and his curse would fall on every elector who would not for respondent No. 1”.

Para. 1 of list 'B' detailed this to have been done by respondent No. 1 and his workers, namely Shri Achhutanand (R.W. 21), Ram Dhani (R.W. 14) in the meetings held on 22nd December 1951 at Naigadhi, on 16th January 1952 at Ganj and on 18th January 1952 at Gurehta and Kundanpurwa. Out of these places there is the un-corroborated sole testimony of a youth P.W. 69 Gaya Gir of village Dihia, who is not entered as an elector any where, and who speaks of a meeting at Naigadhi where the sin of 'Bramha Hattya' and the curse of 'Bramha' are alleged to have been invoked, instead of the curse of 'Guru' as set out in the petition. The only other witness P.W. 67 Raj Bahore about Naigarhi says nothing about this curse. Gaya Gir, however, admitted in cross examination that two or three of the Chelas of respondent No. 1 whom he knew were not present in that meeting. Similarly for Ganj, we have the statement of P.W. 74 Ramdin, resident of Barehta, 2½ miles away from Ganj, which according to him is also called Mauganj. He mentions the Chelas of respondent No. 1 as living in the 3 villages of Gurehta, Sunderpurwa and Jamui, but makes no mention of any in the villages of Naigarhi, Ganj, Gurehta and Kundanpurwa of the list.

Lastly, P.W. 75 Ram Prasad for Ganj and Gurehta, amongst other places mentioned in para. 5 of list 'B'. He is a resident of village Jamui and is silent about the village Kundanpur or Kundanpurwa which is one of the villages mentioned in this para. and where he alleges to have worked as the polling agent of Shri Achhutanand. There is no witness for the place Kundanpurwa. Further his allegation about Shri Jagdish Chandra Joshi as being also present in the meeting, and joining respondent No. 1 with Achhutanand in the alleged exercise of this undue influence is in excess of what is asserted in the pleadings. The statements of these witnesses are contradicted by R.W. 29 Ram Sewak of Naigarhi and Ram Dhani and Achhutanand R.Ws. 14 and 21 respectively themselves. Shri Achhutanand has asserted that this witness P.W. 69 was a canvasser of Shri Ram Ratan Gupta respondent No. 2, a point not put to him in cross examination. In our opinion the allegations contained in para. 12(a) of the petition and in para. 1 of list 'B' are not proved.

For the allegations in para. 12(b) to the effect that “having preached into the same area that it was only respondent No. 1 being the Brahman Guru who could save the electors from the purgatory and not the wealthy Baniyas who were trying to obtain their votes”, and supplemented by para. 2 of list 'B' to the effect that “in the meetings held at Naigarhi on 22nd December 1951 it was held out by respondent No. 1 that he was a Brahman Guru who could save the electors from Hell and the wealthy Baniyas meaning thereby respondent No. 2 and 3 could not do so”, we have again oath against oath of P.W. 67 Ram Bahore for the petitioners and R.W. 14 Ram Dhani on behalf of respondent. No. 1 for Naigarhi only. Moreover there is material discrepancy between the allegation in this para. 2 of list 'B' where this form of undue influence is alleged to have been exercised only by Ram Dhani, and the statement of this P.W. 67 Ram Bahore before the Tribunal on 11th July 1953 where he named Shri Bhagwan Dulta Shastri respondent No. 1 as having addressed the meeting saying that his rivals Ram Ratan Gupta and Pooranmal were Baniyas of another province and would run away after bleeding the people. The allegation against Achhutanand then was to the effect that he exhorted the people to vote for respondent No. 1 because, amongst other things, he would help the poor and was opposed to the Hindu Code Bill and cow slaughter. These allegations were nowhere mentioned in the pleadings of the petitioners. These allegations, therefore, in our opinion, are not proved.

In para. 12(c) it was alleged that in the villages of Amarkantak and Harswah polling stations and other villages of Shahdol district it was held out that every elector who would go to poll his vote in the above said places would be killed by bombs concealed in the ballot boxes and thus the entire villages abstained from casting their votes for fear of being annihilated. In the supplementary para. 3 of list 'B' the details given were that in the villages of Dharamdas, Girni and Harrai under polling station Harswah on 16th January 1952 it was declared by Ramgopal and other agents and workers of respondent No. 1 that if the electors would go to poll their votes, they would be killed by bombs concealed in the ballot boxes and for fear of being wiped out by bombs, a large number of voters did not go to vote.

For this allegation we have the petitioners' evidence consisting of the following 6 witnesses: The statements of (1) P.W. 7 Neola, (2) P.W. 8 Must. Sukhania, (3) P.W. 9 Daddi, and (4) P.W. 42 Punwa, have been held as inadmissible and hence excluded as not covered by pleadings, by order of the Tribunal dated 15th May 1953.

- (1) P.W. 30 Bodhan Ram of Achalpur for village Girni, one Kose from his village according to him, but 2 Kose according to P.W. 31 Sahiba. He stated that Ramgopal a socialist came to his village and asked the voters to vote for the banyan tree telling that in other boxes there were bombs which would explode. His assertion that this took place on 18th January, 1952, on which date the polling was to take place, when he was returning from the market at Jaitehri, which is held on Saturdays, is not correct because January 18 was a Friday and not a Saturday and was not a polling day any where in the constituency nor is the day mentioned in para. 3 of list 'B', wherein 16th January 1952 is mentioned for this fact. Further, his attributing to Ramgopal as making an exception in respect of the ballot box bearing the symbol of banyan tree as being bomb-proof and immune from exploding is inconsistent with petitioners' pleadings where no such exception is made.
- (2) P.W. 31 Sahiba also of Achalpur deposes about the village Girni where 'a man with a red cap' is alleged to have been similarly addressing the crowd.
- (3) P.W. 32 Mayaram of Harswah deposes about village Harrai one Kose from his village, on his way back from the market at Jaitehri 6 Kose from his village where like P.W. 31 and P.W. 32 he had also gone to make purchases.
- (4) P.W. 33 Jawahar grocer of Amarapur for village Amarkantak regarding Ramgopal who was wearing a red cap.
- (5) P.W. 36 Birjoo for the village Dharamdas, 4 miles from his village Basinha, stated that in that place he saw a red capped man beating a tin telling the people to vote for banyan tree otherwise he said that they will die, and not that the bombs would explode.
- (6) P.W. 37 Ramcharan also for the village Harrai, 4 miles from his village Basinha. He first stated that a man with red cap was addressing the crowd telling them not to vote in the ballot box containing the symbol of banyan tree, as there was bomb in it, but afterwards stated that people were told to cast their votes in the box bearing the symbol of banyan tree as there were bombs in other ballot boxes.

We are not impressed with this sort of evidence and therefore hold that this form of undue influence is also not proved.

In para. 12(d) the petitioners alleged that in the areas of Pushprajgarh tehsil and Burhar it was propagated on behalf of respondent No. 1 that if two electors being husband and wife would cast their votes in different ballot boxes, they would be forcibly separated and the women electors of the same area refrained from casting their votes, and details of places and dates were given in para. 4 of list 'B'. We have on behalf of the petitioners the evidence of the following 12 witnesses on this point:—

- (1) Ram Krishna (P.W. 1) of Basinha for his village Basinha in Pushprajgarh tehsil. He could not give even the approximate number of women voters, much less the names, who went back without casting their votes at the beck and call of this red capped man, and he, in

reply to a question by a Member of the Tribunal, admitted that the people who came in connection with election propaganda said to the electors that they were independent and free to vote for whom-so-ever they liked.

- (2) Must. Bajrahi (P.W. 2) also of Basinha who traversed beyond the legitimate bounds of the pleadings which referred to all the ballot boxes, without particularising any one of them, by alleging that the red capped man told the female voters not to vote in the ballot boxes containing the symbol of Engine which is admittedly the symbol of respondent No. 2, but in the boxes containing the symbol of Banyan tree, meaning thereby respondent No. 1, else they would be separated from their husbands and children. This witness too like P.W. 1 could not give the names of even one out of 10 or 15 such alleged voters.
- (3) Must. Rajoo (P.W. 3) of Burhar said that it was alleged that by voting in the ballot boxes of respondent No. 2 Shri Ram Ratan Gupta bearing the emblem of Engine and that of respondent No. 1 Shri Shastri Ji, separation would be effected.
- (4) Must. Belia (P.W. 4) resident of Burhar, a 'mistress' adds another person namely Jodha Brahman to the only one named in the pleadings namely Ramgopal as the author of this clever ruse to scare away women electors and also refers to a bomb having been alleged to be inside the box of respondent No. 2 Shri Ram Ratan Gupta, which instead of exploding as alleged in para. 12 of the petition, would result in the separation of husband and wife.
- (5) Must. Sargujin (P.W. 5) also of Basinha has given quite a different story, alleging that the prohibition was about the box bearing the symbol of bullocks (Congress) and also refers to the bombs in the ballot boxes of some candidate whose name she could not remember. She did not even know the name of the polling station where the polling was to be held.
- (6) Gariba (P.W. 6) alleged the fear of explosion of the bomb as the cause of women electors not casting their votes and not the fear of separation from their husbands. The evidence of this witness in naming the red capped man as Ramgopal is liable to be ignored under order dated 15th May 1953 as relating to the village within the ambit of polling station Suri Chandas not mentioned in para. 12(d) of the petition and para. 4 of list 'B'. For the same reason the statements of Neola (P.W. 7) of Basinha, Must. Sukhanja (P.W. 8) of Baldogri and Daddi (P.W. 9) of village Chakka are inadmissible in evidence.
- (7) Bhupat Gond (P.W. 10) of village Chakka, thana Burhar, the earlier portion of whose statement is for the same reason inadmissible, mentions Sukh Sen Gond one of his relations also amongst the three red capped men who did this propaganda, though he is not mention in the petition.
- (8) Brij Behari Lal (P.W. 11)'s statement about the bomb was held as not admissible, under order dated 15th May 1953. He admitted in cross examination that counter propaganda was done by workers of the Congress and other parties also which, however, cut no ice with the electors.
- (9) Sadho Lal Gond (P.W. 13) is a resident of village Deori, thana Burhar, whose statement demolishes the very foundation of this charge against respondent No. 1. It will be of use to quote the statement of this witness in his own words. This is what he said:—

"At the last election socialist workers came to my village and advised us to vote for socialist but did not say what would happen if we would not do so. Female voters did not go to vote because this was the first occasion in their life and they were afraid".

It is not surprising that there was no cross examination of this witness at all but what is surprising is that there was not the least hint of this witness's turning hostile and no prayer for permission to cross examine him from the side of the petitioners was made. The petitioners must therefore be deemed to accept the testimony of this witness and are bound by it. After the testimony of this witness it is needless to pursue the statements of the remaining witnesses namely Ram Lal

(P.W. 18), Bhagwat (P.W. 19), Bahadur (P.W. 20), Bhadea (P.W. 21), Must. Munia (P.W. 22), Nathoo Lal Gupta (P.W. 35), Birjoo (P.W. 36) and Ram Charan (P.W. 37) on this point, as they are not helpful to the cause of the petitioners.

This red capped mystery man Ramgopal who has almost become a legendary figure in this case, has entered the list on behalf of respondent No. 1 as R.W. 36. He was the official candidate on behalf of the Socialist Party for Pushprajgarh constituency of the Legislative Assembly, but was defeated at the poll by Shri Dan Bahadur Singh. He has denied on oath that he or any other of his workers ever donned red caps during the election or that respondent No. 1 whom he came to know after the election ever came to this constituency before the election.

On a careful examination of the entire evidence we are convinced that neither the respondent No. 1 nor any of his agents, workers or supporters indulged in any such hoax for scaring away the electors as alleged in this para. of the petition. The story fantastic and absurd to be believed, and the evidence is full of glaring inconsistencies and improbabilities.

*Para. 12(e) and para. 5 of List 'B'.*—In para. 12(e) of the petition it was alleged that it was freely circulated in the villages of Naigadhi and Ganj etc. that respondent No. 1 was the spiritual Guru and Head of the Brahman community and whoever would not for him would be visited by the curse of Bramhadeo and would rot in Hell till eternity, and in para. 5 of list 'B' it was detailed that, in the villages of Naigarhi, Barehta Gurehta, Ganj, Sheorajpur, Kundanpur and others in Mauganj tehsil, Ram Dhani, Bramha Deo Singh of village Barehta, Ajodhya Prasad of Mauganj and the workers of respondent No. 1 gave out that the curse of Bramhadeo would fall on every elector who would not vote for respondent No. 1. In support of this allegation three witnesses have come forward on behalf of the petitioners, namely Gaya Gir (P.W. 69) of Dihia, Ramdin (P.W. 74) and Ram Prasad (P.W. 75) whose evidence has already been discussed and who stand contradicted on behalf of the respondent No. 1 by R.W. 4 Shyam Sunder, R.W. 5 Deo Dutta Ram, R.W. 11 Bramhadeo Singh, R.W. 14 Ramdhani Singh and R.W. 21 Achhutnand, only Ajodhya Prasad of Mauganj being absent from the witness box. The petitioners' evidence on this point also is not satisfactory and convincing and is further lacking in one important particular *viz.* the dates. For these reasons we find it difficult to place any reliance on it and hold this allegation also as not proved.

In para. 12(f) of the petition, supplemented by para. 6 of list 'B', it was alleged that respondent No. 1 through his agents, workers and canvassers namely Krishnapal Singh and others, paid money to the Gond residents of villages Chhanori, polling station Nebua on the 15th and 16th January, 1952, Changera and Birhauli, polling station Birhauli on 18th January, 1952, Nawatola on the 14th January, 1952, and Katkona, polling station Lalpur in Burhar area of Shahdol district, for performing Karma dance and drinking liquor, and when their excitement was at a high pitch, they were made to swear by the oath of Madain Dai and Bara Deo that they would not vote for any body else except respondent No. 1.

This Karma dance has been graphically described by Sukhdeo (P.W. 14) and others as a dance where there is feasting, drinking of liquor and smoking of Ganja according to the taste of the persons concerned, and in which men and women both take part and has also been mentioned by Russel, in his famous book called "The Tribes & Castes of the Central Provinces of India", 1916 edition, at page 136. Madain Dai is said to be the principle Deity, and Bara Deo the great God of the Gonds. Two recent booklets in Hindi issued by the V. P. Government and captioned respectively as 'Amarkantak Ka Amantaran (Call of Amarkantak)' and 'Vindhya Pradesh Ke Adibasis', published under the authority of the Information and Publicity Department of Vindhya Pradesh Government along with the report of the Path Inquiry Commission, 1935, have also been cited before us, on behalf of the petitioners to show that the Gond residents of this part of the country are extremely backward, superstitious and credulous folks and can be misled by being treated with liquor and made to swear by their Gods. This is not exactly correct, because in our opinion, it is more on account of age long seclusion and inaccessibility, that conditions in this part of the country in common with some other similar tracts, are not like what they are in more developed areas, but from this to infer that Gonds are no better than mere automatons, who have no scruples to barter their votes for a 'Pau' of liquor, would in our opinion be simply preposterous and a gratuitous affront to their sentiment and intelligence. Moreover, much water has flown down the Nerbada since the time of Russel and the Path Inquiry Commission, and judging from the very attractive pictorial title page of this V. P. Government publication 'Amarkantak Ka Amantaran' referred to above, it would appear that at least Gond women have made very rapid strides towards modernity and would now compare quite favourably with their sisters in several other parts of the country. No adverse significance can therefore be

attached to the mere performance of this Karma dance, unless it is proved to have been organised and financed by or on behalf of respondent No. 1, as a device to secure the votes of the electors. After disregarding the evidence of the petitioners' 8 witnesses, viz. P.Ws. 20, 23, 24, 27, 28, 34, 43 and 44 by virtue of the order dated 15th May 1953, mentioned heretofore, we are left with the evidence of the following 4 witnesses only on their behalf, viz. P.Ws. 25, 26, 29 and 40. Of these:—

- (1) Chunal (P.W. 25) deposes about the dance organised a day after Makra Shankrant, i.e. on 15th January 1952 by one Madho Dadoo son of Babban Saheb Thakur of Birhauri who is alleged to have footed the bill for liquor worth Rs. 10/- on that occasion. The evidence of this witness is not of much importance as he is a resident of Amlai and deposes about the dance in village Chanauri, which is 3 miles from his village and where he alleges to have gone for selling rice for which he admits that there were no buyers. Moreover, this Madho Dadoo is not named anywhere in the petition.
- (2) Ramcharan (P.W. 26) who also deposes about Chanauri is similarly a resident of Balbehra, 3 miles away and admits that there was no particular occasion for him to visit Chanauri on the alleged date. His evidence too is therefore not of much value to the petitioners.
- (3) Ram Prasannu (P.W. 29) of Bamhauri a Congress worker during the election, deposes about a meeting being held near a banyan tree at Chanauri conducted by Krishnapal Singh of Birhauri where about ten persons out of 50 or 60 who were present there, were taking liquor supplied by men wearing red caps. In cross-examination he alleged this to have happened two days after Makra Shankrant while P.W. 25 said that it was one day, and P.W. 26 three days after Makra Shankrant. The evidence of this witness is rather vague and general and therefore not fit to be relied upon.
- (4) Lala Ram (P.W. 40) of Bikrampur, thana Burhar, a Congress worker, deposes about this dance at Katkona, followed by swearing in the name of Madain Dai, at the instance of socialist workers Dad Ullah and Udaibhan not mentioned in the petition at all. Further this is alleged to have taken place three days after Makra Shankrant i.e. on 17th January 1952 it being not disputed that 14th January 1952 was the Makra Shankrant day. In the petition no date given for this place and only Krishnapal Singh's name is given as the organiser and financier of these dances.

There is thus the evidence of 3 witnesses viz. P.Ws. 25, 26, and 29 for the village Chanauri discussed above and which is of a conflicting nature, and only one viz. P.W. 40 Lala Ram for Katkona and none for the other three places namely Chanagera, Birhauri and Nawatola. It is true that Shri Krishnapal Singh has not been produced on behalf of the respondent No. 1 but that fact alone will not add strength to the evidence adduced by the petitioners.

Under these circumstances we hold that this form of alleged undue influence is also not proved to have been indulged on behalf of respondent No. 1.

Lastly, in para. 12(g) it was simply alleged that leaflets were circulated in numerous villages of Shahdol district to the effect that every member belonging to the Gond community who would not vote for respondent No. 1, would be excommunicated. No particulars what-so-ever about these leaflets, their signatories, or the villages where and the dates on which this form of undue influence was alleged to have been exercised, has been given in any para. of list 'B', in spite of being so pointed out at the earliest stage by the respondent in para. 4 of his written statement wherein he pleaded for this allegation to be struck off on this score.

At first we were indeed inclined to strike off this para. for want of necessary particulars and to shut out all evidence and argument adduced thereon. But after listening to the very ingenious, though not equally convincing argument of the learned Advocate-General who argued the case of the petitioners with commendable skill, we allowed Ex.P3 imported by him to fill in this omission to be referred only in proof of this allegation or in corroboration thereof as stated by him. Now, this Ex.P3 is a leaflet mentioned in the list of documents along with 6 other papers attached to the petition when it was presented to the Election Commission at New Delhi. Such a list of documents only which is not verified as it does not require verification, attached to the petition is nowhere specifically mentioned in the Act. Such a list, in our opinion, does not partake of the nature of the list of particulars which requires verification and is specifically mentioned in sub clause (2) of section 83 of the Act and by which the petition is required to be accompanied. In our

opinion therefore this omission of necessary particulars from such statutory list cannot be cured by reference to the list of documents attached to the petition. However, keeping in view the famous dictum of Lord Mansfield quoted with approval in 1948 A.L.J. at page 220, col. 1 line 11 from the bottom, to the effect—

“that in matters of doubt as regards the admissibility of evidence it is safer to admit a document the legality and admissibility of which is in question than to shut it out from the evidence”.

We have taken into consideration this Ex.P 3 cited by the petitioners on this issue not without some hesitation and reluctance in the larger interest of justice not forgetting that the decision of the Tribunal is final and would ordinarily not be open to be agitated in appeal or in revision. Reverting now to Ex.P 3, it appears that this is a small leaflet or pamphlet in Dev Nagri script, captioned ‘Raj Gond Bhaiyon Se Nivedan’ (Appeal to Raj Gond Brothers) printed at Kumar Printing Works, Daraganj, Prayag, in the names of (1) Sukh Sen, (2) Thakur Din, and (3) Bharosa, Raj Gonds of district Shahdol, the English rendition of which is as follows:—

‘Brothers, it is the duty of all the brethren to cast their votes only in the box having the symbol of banyan tree in the coming election. The Biradari clan will take action against the brother who does not do so and he will be out casted from the tribal society’.

The contents of this document, no doubt, are objectionable and come within the orbit of section 123(2) proviso (a) (1) of the Act, as a form of major corrupt practice of undue influence. There is in this leaflet a clear threat of injury to electors in the form of social ostracism, ex-communication and expulsion from caste, if votes were not cast in certain manner, and if proved to have been committed by or on behalf of the returned candidate must result in his election being declared void. On behalf of respondent No. 1 only Sukh Sen Raj Gond (P.W. 22) out of the three alleged signatories of this leaflet has been produced. He was himself the socialist candidate for the Assembly seat from Pushprajgarh and Kotma constituencies. He has disowned all liability for this leaflet and also sworn that he did not know the other two signatories namely Bharosa and Ramdin, the latter being only a mistake for Thakurdin. On behalf of the petitioners on the other hand reliance is placed on the statements of P.Ws. 10, 11, 12, and 73, and a copy of the V. P. Gazette dated 30th December 1951, Part II, page 61, (the last document is intended to show that Thakurdin the other alleged signatory to this leaflet (Ex.P 3) was also a socialist candidate during the last general election and thus a member of the same party as respondent No. 1 on the broad principle of a candidate being bound by the actions of the prominent members of that party, already discussed heretofore). Of the four witnesses of the petitioners, the evidence of Bhupat Gond (P.W. 10) of Burhar, Brij Behari Lal (P.W. 11) also of Burhar, and Tej Mani Raj Gond (P.W. 24) of Basinha is not without importance, as all of them say for their respective places that leaflets like Ex.P 3 were distributed by red capped workers. The statement of P.W. 73 Krishna Saroop Proprietor of Kumar Printing Works, Daraganj, Allahabad on which great reliance was placed by the petitioners is of great importance. He brought with him and produced in court copies of the two leaflets viz. Ex.P 3 the one under discussion and another Ex.P 6 to be discussed later on. They are marked Ex.P.W. 73/1 and P.W. 73/2 respectively. This witness alleged that typed manuscript of these leaflets were given to him by Shri Bhagwan Dutta Shastri respondent No. 1 and another person namely Shri Jagdish Chandra Joshi then present in court whom he named by mistake as Girish Chandra Joshi. This typed manuscript, which indeed would have been the best evidence against respondent No. 1, as it is further alleged to have contained the name of Shri Bhagwan Dutta Shastri also amongst the signatories, could not be produced, as it is said to have been destroyed. Any counter-foil or carbon copy of the receipt for the sum of Rs. 50/- which is alleged to have been paid as advance on 2nd January 1952 when the order for ten thousand leaflets was placed, or for the sum of Rs. 100/- which is further said to have been paid on 4th January 1952 when delivery of those leaflets was taken has also not been produced, in the ground that no such receipt book is maintained in this press. Their absence, as well as in the absence of the written order from respondent No. 1, all liability for these leaflets is sought to be disowned on this behalf. The witness has, however, produced the counter-foil marked Ex.P.W. 73/3 of the bill bearing date 4th January 1952, and evidencing receipt of Rs. 100/- for these leaflets from respondent No. 1, which counter-foil has got the serial No. 178A upon it. From this it was argued for respondent No. 1 that the use of the suffix ‘A’ after No. 178 on this bill is indicative of an afterthought and is a clear proof of subsequent interpolation. We have very minutely examined this Bill Book and find that much of the adverse criticism that has been levelled against the testimony of this witness by the learned counsel for respondent No. 1, has proceeded from a

very incorrect impression created in his mind by a typing mistake at line 2 from bottom at page 2 of this statement where the date 26th December 1950 in respect of the bill immediately preceding the one in question was wrongly typed in place of 26th December 1951, and which caused a lot of confusion and distrust of this witness's testimony. On a careful scrutiny we are satisfied that there is nothing suspicious or wrong in whatever this witness has stated. Neither respondent No. 1, has thought fit to enter the witness box to contradict this very bold assertion of this witness nor has he produced Shri Jagdish Chandra Joshi to do the same. The statement of this witness thus stands uncontradicted and must therefore be accepted as true. We find clear indications to associate respondent No. 1 and Shri Jagdish Chandra Joshi, a prominent member of the Socialist Party, with this leaflet, which is indeed of a very objectionable nature. The action of P.W. 73 in destroying the original typed manuscript might at most be called indiscreet, but it was certainly not culpable. We have, therefore, no hesitation in holding this part of the alleged undue influence as sufficiently proved and decide this part of the issue in favour of the petitioners.

*Issue No. III (2)*—In view of our finding on para 12(g) above, the effect is that the election of respondent No. 1 is void and is liable to be set aside.

*Issue No. V (1) & (2) and IX (1) & (2)*—These issues may be taken together as in proof thereof reliance is placed on behalf of the petitioners Ex P-6 only, which is a leaflet in Hindi purporting to be printed at the same Kumar Printing Works, Daraganj, Prayag, which printed Ex P 3 already discussed under issue No. III relating to undue influence as alleged in para 12(g) of the petition. That this leaflet was got printed and published by respondent No. 1 is proved beyond doubt by the un rebutted testimony of P W 73 Krishna Saroop Saxena, documented with Ex P W 73/3 already discussed. And the fact that it was widely distributed by the workers of the socialist party in the district of Sidhi and tehsil Mauganj of Rewa district, as detailed in para (a) of list 'D' supplementing para 13 of the petition, is proved by the statements of P Ws Nos 28, 47, 48, 50, 51, 64, 65, 66, 67, and 75, namely (1) Ram Prasad Gautam of Jatehri, (2) Laljit Singh Thakur of Itwan, (3) Ram Suchit of Burhar, (4) Sankarson Prasad of Supela, (5) Rudra Pratap Singh of Pipra Jhanpi, (6) Badri Singh of Marwas, (7) Srinivas Singh of Kandhwar, (8) Jugul Kishore of Beohari, (9) Raj Bahadur of Sheorajpur, (10) Ram Din of Barehta, and (11) Ram Prasad of Jamui. The evidence of none of these witnesses on this point has been shaken in cross examination. In this leaflet an appeal is made in the names of Dhanuk Ram and Deo Dutt Ram of Dhurchta and one Samalia Ra. of Sheorajpur, to the electors to cast their votes in favour of respondent No. 1 who is referred to as the Guru, in preference to Shri Ram Ratan Gupta, respondent No. 2 who is depicted as a Marwari Seth of Carors of Kanpur owner of big cotton Mills, a first class black marketeer of Uttar Pradesh, and one who was notorious for sucking the hard-earned money of the poor labourers and for committing atrocities on them etc etc, and against Shri Pooranmal, respondent No. 3 who is painted as another Marwari residing at Kotma in the district of Shahdol, and notorious for black marketing in rice and maintaining forged account books and backed by 'illaqedars' (landed aristocracy) like Sardar Narbada Prasad Singh, more particularly known as Harol Saheb. The earlier portion of this leaflet quoted above is full of statements in relation to the personal character and conduct of respondents Nos 2 and 3, which are on the face of them of a grossly defamatory nature and the latter portion of it ends in an appeal to the electors, the English rendition of which as given with the petition, is as follows:—

"Against these two (Shri Ram Ratan Gupta and Shri Pooranmal) the respected Guru of our area Shri Bhagwan Dutta Shastri is contesting. Guru Ji is greatly religious and is a very kind hearted soul. It is needless to say much about him. It is now your duty to cast your vote in favour of your religious Guru Shastri Ji. Not to vote for Guru Ji amounts to rebellion against the Guru. Both 'Dharma' and 'Karma' would be annihilated by voting for Baniyas and Marwaris. Guru Ji is against cow slaughter and Hindu Code Bill. Both the Baniyas are the supporters of English culture. What protection can these traitor give to Dharma (religion). Therefore if you want to protect you Dharma, if you do not wish to spoil this Lok (world) and the other Lok, then vote for Guru Ji. At least that disciple who does not vote for Guru Ji will fall in the hell as 'Guru Droh' (rebellion against Guru) is the greatest sin."

Dhanuk Ram R/O Dhurehta  
Deo Dutt Ram R/O Dhurehta  
Samaliaram R/O Sheorajpur  
Tehsil Mauganj

Kumar Printing Works, Daraganj, Prayag



So far as the earlier portion of this leaflet is concerned which forms the subject matter of issue No. V, it was conceded by the learned Advocate General, who first argued the case on behalf of the petitioners, that there being no evidence to show that these statements were false, issue No. V was not pressed. This issue was however resuscitated later on by Sir Iqbal Ahmad who argued, in his own inimitable style, that these statements about the personal character and conduct of the two respondents being defamatory *per se*, were reasonably calculated to prejudice the prospects of these candidates' election, and the burden of proof was therefore shifted on the respondent No. 1, and as he has failed to discharge it, a corrupt practice as laid down in section 123(5) of the Act was established to have been committed by or on behalf of the respondent No. 1 Sir Iqbal Ahmad sought to make a distinction between statements which were defamatory *per se*, and those that were not so, and argued that in the former case, the burden of proof was on the respondent, and in the latter case on the petitioners. In support of this proposition he made extensive quotations from standard books on the law of Torts, such as those by S. Rama Swamy Iyer, Pollock, Underhill and Ratanlal Dhirajlal. Special reference was made to page 150 of the book by the last mentioned authors (Ratanlal Dhirajlal 1943 edition of the English and India Law of Torts) under the subject libel where it is laid down that:—

"The falsity of the charge is presumed in the plaintiff's favour. The burden of proof that the words are false does not lie upon the plaintiff. Defamation of a person is taken to be false until it is proved to be true. If a man is proved to have stated that which he knew to be false no one need inquire further. Every body assumes thenceforth that he was malicious, that he did a wrong thing from some wrong motive".

But the full reports of the English and the two very old Indian cases that are cited at the foot note of this book were not laid before us and we do not, therefore, know under what circumstances the above quoted observations were made. It is not necessary for us to dive deep into these books on the Common Law in the presence of our Special Law of Election on the subject as embodied in section 123(5) of the Representation of the People Act, 51, which speaks of "any statement of fact whether defamatory or otherwise which must be proved to be false. The language of the Statute being clear and unambiguous, there is hardly room for making any distinction such as is suggested by Sir Iqbal Ahmad for its interpretation, or to refer to Common Law in preference to this Special Law. Section 123(5) of the Act includes amongst the eight major corrupt practices:—

"The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election".

This view of ours in insisting upon strict observation of the statutory requirements of our own Special Law on Election and ignoring the provisions of Common Law for its interpretation, finds support from a most recent pronouncement of Their Lordships of the Supreme Court who, in a case under the Representation of the People Act, 1951, are quoted at page 211 of A.I.R. 1954 (S.C.) to have remarked that:—

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the Common Law and that the Court possesses no Common Law Power".

No decision of any Election Tribunal has been cited before us on behalf of the petitioners, in support of the view that where a certain statement was defamatory *per se*, the petitioner was relieved of the initial burden of proof to show that it was false. In our opinion the burden of proof for establishing the corrupt practice as laid down in section 123(5) of the Act is initially on the petitioner, though in case of statements which are of a grossly defamatory nature on the face of them, very slight evidence will be required to displace it and to shift it on to the respondents. We are fortified in this view by a decision reported at page 58 in Sen & Poddar's India Election Cases 1935-51 relating to the Amritsar South (Sikh) Constituency 1937 for the Punjab Legislative Assembly to which decision the learned Chairman of this Tribunal was a party. The learned Commissioners in that case are quoted

at page 60 of the report, to have remarked while discussing a poster containing such statements that:—

“the initial onus was on the petitioner, though it could be shifted even by the production of slight evidence”.

To the same effect is the observation made at page 247 of Shri Gur Saran Lal Srivastava's book “Indian Elections and Election Petitions”, 1952, edition where another decision of the same learned Commissioners *viz.* Ambala & Simla M.R. 1937: Doabia (1) 63: S. & P. 6, is cited in support of this view. We are in complete accord with these two decisions because they appear to be in conformity with the plain meaning of the wording of section 123(5) of the Act. These decisions are directly in point, whereas the law referred to by Sir Iqbal Ahmad is based on Common Law. We prefer to take notice of our own Special Law rather than the Law of Torts quoted by Sir Iqbal Ahmad. Agreeing therefore with the learned Advocate General that there is no evidence at all on record from the side of the petitioners to show that these statements of facts about the personal character and conduct of respondent No. 2 and 3 were false, and which the respondent No. 1 or his workers, either believed to be false or did not believe to be true, we decide this issue No. V in favour of the respondent No. 1 and against the petitioners.

The position about the latter portion of this Ex.P-6 is however quite different. Here a clear and systematic appeal to vote or refrain from voting on grounds of caste, race, community and religion is made to the electors, which constitutes a minor corrupt practice under section 124(5) of the Act, and there is moreover a threat of injury which is covered by the proviso to section 123(2) (a) (i) and (ii) of the Act, making it a major corrupt practice also. Samalia Ram of Sheorajpur, one of the three alleged signatories to this leaflet, though summoned by respondent No. 1, and present in court was given up and not produced, and it is difficult to believe Dhanuk Ram and Deo Dutt Ram, the other two signatories of this leaflet, who have both entered the witness box on behalf of the respondent No. 1, as R.Ws. 6 and 5 respectively, and denied all responsibility for this leaflet. It is still more difficult to believe respondent No. 1 who without entering into the witness box to deny these allegations with no ostensible reason for this attitude, has simply pleaded in his written statement that this and other leaflets were manufactured by respondent No. 2 or his supporters with a view to challenge his election. If this indeed was a fact we fail to understand why respondent No. 1, who was the best person to give a lie to this very serious allegation of the petitioners did not produce any witness in rebuttal of the petitioners' evidence on the fact of printing, publishing, and distributing this leaflet as well as of the other one, *viz.* Ex.P3. In our opinion the keeping aloof from the witness box of respondent No. 1 and Shri J. C. Joshi, who are alleged by P.W. 73 to have originally placed an order with him on 2nd January 1952 for the printing of these two leaflets Exs.P-3, and P-6, is fatal to the case of the respondent No. 1, and an adverse inference can legitimately be drawn on this score against him. The plea of respondent No. 1 that these leaflets were manufactured by respondent No. 2 cannot be accepted because it would be ridiculous to suppose that respondent No. 2 would manufacture such leaflets which would ruin his chances of election, particularly in view of the un rebutted evidence of their being printed at the instance of respondent No. 1 and widely distributed throughout a major portion of the constituency. To drag and exploit religion in an issue which is purely political, would doubtless not be political honesty or sound strategy and as such no Tribunal would be slow in the interest of maintaining the purity of Elections, to condemn it in most unmistakable terms. There is in our opinion, reliable and unimpeachable evidence in support of this allegation of the petitioners. On a comprehensive survey of the entire evidence on this point we are inclined to hold that the allegations on this issue No. IX as contained in para. 17 of the petition, supplemented by list 'H' of the list of particulars, are justified by the factual analysis made above. Our findings, therefore, on this issue No. IX is in favour of the petitioners and against the respondent No. 1. To sum up, issue No. V is decided in favour of respondent No. 1, but issue No. IX against him. The effect is that the election of respondent No. 1 must be declared void because of the proof of corrupt practices as defined in section 123(2) proviso (a) (i) & (ii), and section 124(5) of the Act.

**Issue No. VI.**—On this issue the allegations of the petitioners as contained in para. 14 of the petition are that the respondent No. 1 directly or indirectly through his agents, canvassers, workers and supporters hired and procured bullock carts and motor trucks for the conveyance of the electors to Kotma and Alahua polling stations in Shahdol and Mauganj and back to their places, details whereof are set out in list 'E' annexed to this petition and para. 1 of the 3 paras of list 'E' referred to trucks Nos. VPSL 95 and VPSL 89 in which electors were alleged to have been brought by Haider Ali, who is admitted to have himself stood as a candidate in

this election on behalf of the party having the symbol of 'Hut' (K.M.P.P.) for the V.P. Assembly. This paragraph was therefore rightly given up by the learned counsel for the petitioners.

For the allegations in para. 2 of this list to the effect that on 11th January 1952 motor truck belonging to Achhutanand brought electors from the villages of Amolak and Jurwania (misprinted as Jagmenia) to Alauha polling station by Shri Achhutanand of village Deora, we have for the petitioners the testimonies of P.W. 68 Shyam Lal of village Jurwania and P.W. 70 Narbada Prasad of village Beohariya, both of whom live very close to the polling station of Alauha. They have given in graphic detail an account of electors being carried to the polling station Alauha from Jurwania, Senwa and Amolakpur, in a motor truck, by Achhutanand of the Socialist Party, P.W. 68 Shyam Lal has given the name of 4 such electors namely Budhi, Ram Manohar, Sumeshar and Indrajit. This allegation is denied on behalf of respondent No. 1 by R.W. 28 Angad of village Bannai adjoining village Alauha who came as an unsummoned witness at the beck and call of some unknown person of Bhargawan or some other unknown place, and by R.W. 21 Achhutanand a defeated candidate for the V. P. Legislative Assembly for Mauganj constituency and a prominent member of the Socialist Party, being the General Secretary of Rewa Distt. Socialist Party at the time of election and who alleged P.W. 68 and P.W. 70 mentioned above, amongst others, to have canvassed during the last general election for Shri Ram Ratan Gupta, respondent No. 2—a point not put to these witnesses in their cross-examination. Achhutanand admitted that his brother Anjani Kumar who works as a forest contractor, and Bhaiya Lal, who lived in his village Deora, both had trucks during the election and that these trucks were possibly hired by Government to carry ballot boxes. These details on behalf of respondent No. 1 appear to be very evasive. We have examined the marked electoral roll of Alauha and find that all these 4 persons are electors and all of them except Someshar did cast their votes at the election. None of them has been produced by respondent No. 1 to contradict Shyam Lal on this point, nor has he summoned and produced any body on behalf of the Government to show that these trucks were really engaged by the Government on January 11, 1952, to carry the ballot boxes. The plea of Achhutanand that there was no occasion for him to inform the respondent No. 1 of the trucks being so hired by Government so as to enable respondent No. 1 to summon the appropriate authority of the Government to contradict the statement of P.W. 68 is rather difficult to believe. The respondent No. 1 has unfortunately not entered the witness box and there is no evidence to show that this corrupt practice was committed contrary to his orders or without his sanction or connivance or that he took all reasonable means for preventing its commission. On a very careful examination of the entire evidence on this point we are constrained to hold that vehicles for the conveyance of electors were used by Achhutanand to Alauha polling station only presumably with the connivance of respondent No. 1 in disregard of sub clause (6) of section 123 which makes "the hiring or procuring whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or by a person with the connivance of the candidate or his agent for the conveyance of any elector (other than candidate himself, the member of his family or his agents) to or from any polling station provided under section 25 or a place under sub-section (1) of section 29 for the poll" a major corrupt practice, the two provisos of this sub-clause (6) not being pressed on behalf of the respondent No. 1.

As for the use of bullock carts as alleged in para. 3 of list E we are however of the opinion that the statements of P.W. 38 and P.W. 39 are rather vague and not of sufficient probative force to pin the responsibility for their use on respondent No. 1 or on any of his workers, supporters and agents.

*Issue No. VI (2).*—As a result of our findings on issue No. VI(1) above, the effect in our opinion is that the election of respondent No. 1 the returned candidate is void under section 100, sub-section (2) (b). We, therefore, decide this issue in favour of petitioners and against respondent No. 1.

*Issue No. VIII(1) (2).*—In para. 16 of the petition the correctness of the election expenses lodged by respondent No. 1 (Ex.P.W. 76/14) has been challenged. As shown in list 'G' of the particulars, 4 items of expenditure shown in form No. 26 filed by respondent No. 1 have been assailed. It is alleged that the correct amount received by respondent No. 1 has not been entered in receipt column. In Col. No. 3 of form No. 26 at page 1. Rs. 3,859/1/- has been shown to be the total amount of receipt on 5th December 1951. It may be noted here that this sum of Rs. 3,859/1/- was not received by respondent No. 1 from any third person. It was his own money as noted in Col. 2. In regard to the petitioners' objection on this score the learned Advocate General has pointed out to the amount of total expenditure incurred by respondent No. 1 on his election which exactly tallies with

the figure shown in the receipt column. Hence the learned Advocate General has argued that the contesting respondent No. 1 could not have anticipated the exact amount of his expenditure on 5th December 1951 when he took 3,859/1/- out of his own fund, and therefore it was a mere mechanical attempt to adjust account. The fact that form No. 26 is not a book of account required under section 44 of the Act, should not be lost sight of. In the book of account it was necessary for respondent No. 1 to enter the different sums of money taken out by him and given to his election agent on particular dates. Further, if the money had been given to respondent No. 1 by any one else, the comment of the learned Advocate General could have great force no doubt. But the respondent No. 1 incurred the various expenditure from time to time out of his own private fund and at the end after totalling the expenditure, he put in the receipt column of Form No. 26 at page 1 the exact amount spent by him over the election out of his own pocket and from his own purse. Thus we do not find sufficient ground for holding the figure of Rs. 3,859/1/- shown in the receipt column as false. Next, the sum of Rs. 37/9/1 paid as price of petrol etc. by respondent No. 1 on 4th December 1951 is an item of expenditure shown in form No. 26 (vide item No. 1 at page 2). It is urged that since the total receipt of Rs. 3,859/1/- is dated 5th December 1951, how could the expenditure on the proceeding dates be shown because respondent No. 1 had no money in his hands on 4th December 1951. Here again the fact that all money spent over the election came out of respondent No. 1's own private fund is ignored, when he has to incur all the expenses out of his own pocket, it is immaterial if he notes an item spent by him on the previous date on the following day.

With regard to the expenditure of printing pamphlets, respondent No. 1 has entered the cost of printing Exs. R-1 and R-2. Printing and distribution of pamphlets like Exs. P1 and P2 are also attributed to respondent No. 1 and on that plea rests the argument regarding the omission to enter the cost of printing thereof. We have found hereinafter while dealing with these pamphlets under Issue No. XII that pamphlets like Exs. P1 and P2 were not got printed by respondent No. 1, or his agents or workers. In view of this finding the present objection of the petitioners has no legs to stand upon.

The answer to the last objection in regard to the omission to enter cost of obtaining certified copy of the electoral roll of Rewa Municipality for filing his nomination paper is to be found in paragraph 16 of the written statement. Respondent No. 1 did not think, rightly or wrongly, that the expenses incurred at the time of filing nomination papers should be included in or treated as election expenses. So the omission to show this item of expenditure is mainly due to the aforesaid notion of respondent No. 1, and is, in our opinion, very minor and technical.

Hence we find that the account of election expenses lodged by respondent No. 1 (Ex.P.W. 76/14) is neither false nor incorrect in material particulars. The issue is accordingly decided in respondent No. 1's favour and against the petitioners.

*Issue Nos. X(1) & (2) and XII(1) & (2).—*These two issues may be taken up together as they relate to the same matter viz. leaflets Exs. P1 and P2. Shri Janardan Prasad (R.W. 1) and Shri Madsoodan Prasad (R.W. 2) have both denied on oath that they had any thing to do with the issuing and publication of the notices Exs. P1 and P2 having no dates or names of the printer and which purported to be in their respective names and are mentioned in lists 'I' and 'K' supplemental to paras. 18 and 20 respectively of the petition. Both Janardan Prasad and Madsoodan Prasad admitted having signed and agreed to the printing of Exs. R2 and R1 respectively with the only difference that the former viz. Ex. R2 and R1 bear on their faces the name and address of printers and publishers thereof which are, however, missing in the case of latter viz. Exs. P1 and P2. Both R.W. 1 and R.W. 2 mentioned above are respectable pleaders and member of Municipal Board, Rewa of which respondent No. 1 is also no doubt a member. R.W. 1 Shri Janardan Prasad has denied in unmistakeable words that he incurred any expenditure on these notices associated with his name and Shri Madsoodan Prasad did not say that the expenditure was incurred by him. There is no evidence in rebuttal on behalf of the petitioners, and we, therefore, decide these issues in favour of respondent No. 1 and against the petitioners.

*Issue No. XI(1) and (2).—*Confining the allegations to para. 2 of list 'J' supplemental to para. 19 of the petition (para. 1 of list 'J' not being pressed) it was alleged for the petitioners that the liquor shop owned by Ganga Singh and Oudhraj Singh in villages Lahsua, Singhaura and Jaitehri and Pondi in tehsil Pushprajgarh was used for holding a meeting where electors were admitted and where intoxicating liquor was being sold to the public and thus an illegal practice was

mentioned in section 125(2) was committed by respondent No. 1 directly or indirectly through his agents, canvassers, workers and supporters and reliance for this was placed on the oral testimony of 4 witnesses viz. P.Ws. 27, 28, 34 and 35 against which there is said be no evidence in rebuttal on behalf of respondent No. 1. Of these—P.W. 27 *Shankar Dutt* of Jaitehri deposes about meetings alleged to have been held in his village at the market place in the day on the open ground in front of distillery hutment of Ganga Singh and Oudhraj Singh within railway premises, 3 or 4 days before the polling which took place at his place on 11th January 1952, by the Socialist Party candidate Ramgopal, whom he saw distributing money to Kols residing there for buying liquor. Now Ramgopal's name is nowhere mentioned in this para. 2 of list 'J' nor are any dates about these incidents given therein. Moreover, according to this witness meeting was held outside the liquor shop in the open ground. So it is not hit by section 125(2) of the R.P. Act. Hence the evidence of this witness is not of any importance.

P.W. 28 *Ram Prasad Gautam* also of Jaitehri stated that he saw Ramgopal Upadhyia telling the liquor seller to supply liquor to Kols present in the meeting for which he made payment. He (this witness) does not speak of any meeting in a liquor shop. Next P.W. 34 *Jigna Kol* wood cutter of Jaitehri stated that he saw Ramgopal near the liquor shop near a pond between Laheuna and Pondi little before sun set holding out promises to 40 or 50 Gonds and Kols present there to pay for their drink in lieu of their votes and that he also got one 'Pau' of liquor to drink in the court-yard of the liquor shop of Ganga Singh Thakur, liquor licensee. In cross-examination this witness stated that this incident took place 5 or 7 days after Makra Shankrant i.e. about 19th or 20th January, 1952, almost after the polling had finished, because January 19, 1952 admittedly was the last day of poll in the constituency.

Lastly, P.W. 35 *Nathoo Lal Gupta* deposed about Ramgopal Upadhyia socialist worker addressing a meeting of 50 or 60 people, 5 or 6 days before the Makra Shankrant at the liquor shop at Pondi, 7 or 8 miles from his place Jaitehri. The reason given by this witness for his presence there namely the buying of goods and paddy from an Ahir at Pondi, is not at all convincing, because neither the book in which he alleged to have made a note of the name of the vendor was produced nor could he remember his name.

This is all the evidence adduced on behalf of the petitioners on this issue and we are asked to believe it as it is not rebutted on behalf of respondent No. 1. It is however, to be noted that, unlike the allegations in para. 1 of this list 'J' wherein the dates and the name of Krishnpal Singh alleged worker of respondent No. 1 was given but which para. was not pressed at arguments, this second para. was singularly lacking in these important details as no dates of the meetings are given nor the name of Ramgopal who seems to have been so well known to all the petitioners and other workers is mentioned at all. In these circumstances no reliance can be placed on the evidence on behalf of the petitioners which we have no hesitation in discarding. Our finding on this issue therefore is also in favour of respondent No. 1 and against the petitioners.

*Issue No. XIII(1) and (2).*—List 'L' gives in 12 separate paras, particulars of the alleged non-compliance with the provisions of the R.P. Act 1951, Rules and Orders made there-under, mentioned in para. 22 of the petition where improper refusal of votes polled in favour of respondent No. 2 and thereby materially affecting the result of the election is also alleged. Of this list paras. 2, 7 and 8 were not pressed at the time of arguments and paras. 1, 3, and 4 were taken up together as they relate to the polling stations of Bijuri, Thangaon, Belia, Bahera Bandh and Katkona of which Shri Oudh Saran Misra (P.W. 80) Act. Asstt. Divisional Forest Officer at Panna was at the time of the election, the Presiding Officer. Now all that is said in para. 1 of list 'L' is that the ballot papers issued for these polling stations were found in the ballot boxes of other polling stations. This allegation need not detain us long as it is woefully lacking in essential particulars in as much as not only the names of those 'other polling stations' are not given, but the provision also of the Act, Rules and orders thereby violated has not been pointed out at all, and worst of all is the fact that nothing is said about the ultimate fate of these ballot papers, whether they were altogether improperly rejected or were improperly accepted, though this information is contained in Ex.P.W. 58/5 filed at the hearing and hereinafter referred to which cannot however be a substitute for the necessary particulars to be given in this list. One indeed looks about in vain to ascertain in which particular aspect this irregularity manifested itself.

In para. L-3 non-compliance of provisions of Rule 32 of the Representation of the Peoples' (Conduct of Elections and Election Petitions) Rules, 1951, is alleged on the ground that no separate packets of unused ballot papers at the polling

stations were made nor were they sealed or delivered to the Returning Officer but were on the contrary retained by the Presiding Officer Shri Oudh Saran Misra (P.W. 80) after the polling and produced in loose heaps from his own house before the Returning Officer at the time of counting one week after the date of polling, and in para. L(3) non-compliance with Rule 33 for not preparing accounts of ballot papers in form No. 10 is alleged.

Reliance is placed for these on the admission of Shri Oudh Saran Misra (P.W. 80) made in his statement before the Tribunal on 17th August 1953 together with the statement of Shri Ramanath Misra (P.W. 62) Lawyer, Pairakar of Shri Ram Ratan Gupta respondent No. 2 and P.W. 58 Shri Rajkumar Shukla and 5 Exhibits filed by the latter. Of these—

Ex. P.W. 58/4 is the original 5 page telegram dated 26th January 1952 sent from Shahdol by Shri Ramanath Misra (P.W. 62) to the Chief Electoral Officer, Rewa (Pt. Bisheshwar Prasad Dube) complaining of 345 such votes polled at Katkona and Bahera Bandh polling stations in favour of Shri Ram Ratan Gupta, being declared invalid by the Returning Officer, while those polled for another candidate (not respondent No. 1) under similar circumstances, being accepted.

Ex.P.W. 58/5 is the original application dated 28th January 1952 by Shri Ramanath Misra with the prayer portion bearing the signature of Shri Yadvendra Singh Advocate for Shri Ram Ratan Gupta to the Chief Electoral Officer, V.P., Rewa confirming telegram (Ex.P.W. 58/4) dated 26th January 1952 and giving details of ballot papers referred to in list 'L(1)', 345 of which related to respondent No. 2 and 197 to respondent No. 1 and complaining of various acts of omissions and commissions detailed in lists L(3) and L(4) on the part of the Presiding Officer Shri Oudh Saran Misra (P.W. 80).

Ex.P.W. 58/6 purports to be the copy of a telegram of Shri Ram Ratan Gupta forwarded to the Chief Electoral Officer, Government of Vindhya Pradesh, Rewa, by the Secretary, Election Commission, India, New Delhi with his letter dated 2nd February 1952.

Ex.P.W. 58/9 is the note bearing dated 2nd February 1951 of the Chief Electoral Officer, Vindhya Pradesh, regarding his visit to Shahdol which states that all such ballot papers were validated and a major crisis was averted.

Ex. P.W. 58/10 is the copy of a letter dated Shahdol the 28th February, 1952. No. 600/439-Elec. 41 of the Deputy Commissioner *cum*-Returning Officer, V.P., to the Chief Electoral Officer, V.P. which is indeed a very illuminating document inasmuch as after re-counting all the mistakes that had been committed by P.W. 80 Shri Oudh Saran Misra concludes by remarking that these mistakes of Shri Oudh Saran Misra were *bona fide* and the grievance of the applicant (worker of Shri Ram Ratan Gupta) on this score had been satisfied and that he had afterwards nothing to complain on this account. It would thus appear that the above non-compliance with the provision of rules have not resulted in the election being materially affected in any way and as such is rather of no importance. We need now however marvel at the taste of this witness, P.W. 80 Shri Oudh Saran Misra in foisting his own mistakes upon the Returning Officer when he said in his deposition before the Tribunal that it had not been explained to him that he was to use the ballot papers of a particular serial at a particular polling station. On his own showing he did not himself take the trouble of going to receive the ballot papers and instructions from the Returning Officer, but deputed his Camp Clerk to do so and yet complains that the Returning Officer gave him no instructions regarding the use of ballot papers. He admits that written instructions regarding the use of ballot papers were given to him in regard to the conduct and procedure to be followed at the election but denies that instructions regarding the use of ballot papers of particular serial number at particular polling station were supplied to him as if, in his opinion, the use of ballot papers was outside the scope of conduct and procedure at the election which was admitted by him to have been explained by the Returning Officer. Further, he himself did not take the trouble of filling in form No. 10 properly and explained his omission to do so on the ground of his own very incorrect interpretation of the instructions laid therein. Instead of thanking the Returning Officer for timely taking the chest-nuts out of fire for him, he puts all the blame for his own mistakes on the Returning Officer and takes refuge behind the written instructions which he very conveniently left behind at home like the unused ballot papers and did not produce them before the Tribunal at the hearing. In this connection we would like to point out to the Returning Officer to be a bit more careful in the selection and appointment of Presiding Officers under section 26 of the Act in future. The work of such an officer is not a child's play. On the contrary his duties are of great public importance and a little mistake even made *bona fide* may result in huge loss of time, money and

energy to the candidates and the Government if the election is upset and fresh poll is ordered. Officers of higher education and with a little smattering of ordinary law who may not be very difficult to procure, would be more appropriate for this work than a subordinate officer of the forest department who is naturally expected to be more conversant with jungle laws than the law of election. P.W. 80 Shri Oudh Saran Misra had only passed the Matriculation Examination and had attended the Intermediate classes for one year and since then he was in Forest Department Service and presumably living in the wilderness. Little wonder therefore that he committed such mistakes which an officer endowed with ordinary common sense would have easily avoided only if he took a little care to attend to the instructions of the Returning Officer and also to scan the printed details on form No. 10.

About the allegations in para. 5 of list 'L' that:—

"no arrangements for the safe custody of the ballot boxes, packets and other papers until the commencement of the counting of votes were made by the Returning Officer as required by Rule 34 and that on the other hand on 4th February 1952 at Rewa at the time of counting of votes, ballot boxes were found with seals open and outer symbols missing".

there is no evidence at all on behalf of the petitioners except the solitary reference in the statement of P.W. 62 Shri Ramanath Misra who in the last para. at page 4 of his statement says about other things that happened at Rewa on 4th February 1952, but nothing about the allegations in this para. which are therefore held as not proved at all.

For allegations in para. 6 that:—

"Rule 40 was not complied with at the time of counting inasmuch as the Returning Officer allowed unauthorised persons including the hawkers and the vendors of commodities to have free access to the tables where counting was going on at Sidhi on 6th February 1952".

Reliance is placed on behalf of the petitioners on the statement of P.Ws. 60, 61, 62 and 64. Of these—

P.W. 60 Shri Ram Baboo Srivastava Treasury Officer Sidhi who was on duty on 6th February 1952 at the counting done in the hall of the school at Sidhi simply stated that during the counting on that day which started in the afternoon and continued till 10 in the night, the clerks engaged in counting took tea and refreshment served by about half a dozen servants of the hotel and that he did not remember if the counting was continued or stopped during the time of tea and the refreshments were served. According to this witness there were in all 60 or 68 persons of the counting staff besides 5 or 6 agents, candidates or their counting agents.

P.W. 61 Shri Bhairon Prasad Saxena Tehsildar, Huzoor tehsil, Rewa who at the time of election was deputed as District Election Officer, Sidhi stated that the Returning Officer was anxious to finish the counting on the same day (6th February 1952) and that there was therefore no break in the counting as far as he remembered. Further that some of the officials went on counting while others on the same table took tea and refreshments and at that time only the servants of the Sidhi Hotel 7 or 8 in number were allowed to enter the hall to serve the tea and refreshments.

P.W. 62 Shri Ramanath Misra Lawyer of Shri Ram Ratan Gupta already mentioned above stated that besides the counting staff, there were 10 or 12 other men who were not on duty but who were coming in the hall and going out, that some of them were Government servants, that the other men used to stand in the hall, contact the counters and then go out and that there was no prohibition against the entrance of any one in the counting hall.

Lastly P.W. 67 Sheo Balak Lal who was working as a clerk in the court of the Munsiff Magistrate at Sidhi at the time of election and was among the counting staff at Sidhi on 6th February, 1952, stated that during the progress of the counting there was no restriction on any one's entrance or exit to or from the hall and that those who were on counting duty were free to go out when they liked without being searched. The fact that amongst the 20 'outsiders' alleged by him to have been present on this counting he included the Returning Officer and the counting agents 4 or 5 in number as also the Assistant Returning Officer, 2 or 3 clerks present at the tables of the Returning Officer, as well as the Treasury Officer and the Chaprasis who were bringing the ballot boxes shows how reckless he is in making such wild allegations. The statement of this witness stands self condemned.

On behalf of respondent No. 1 we have, on the other hand, the statement of R.W. 27 Jagat Bahadur Singh, L.D.C. in Deputy Commissioner's Office at Rewa who was deputed as one of the counting staff when the ballot papers of this Parliamentary seat were being counted at Sidhi on 6th February 1952. He stated that no outsider could be in the hall without the permission of the Returning Officer and that tea and eatable were served to the counting staff but during this period the counting had been stopped.

R.W. 35 Shri Bhrigunath Prasad, Office Superintendent, Land Records at Sidhi who was on duty as Election Officer during the poll and was also present at Sidhi on the day of counting i.e. 6th February 1952, stated that only those persons were admitted to the counting at Sidhi who were directly connected with the election or who had permission from the Returning Officer, that tea was supplied to the counting staff at about 5 P.M. for which the Returning Officer paid and that it was taken by them after counting of one candidate was finished and before the commencement of the counting of the other. Further that Shri Ramanath Misra (P.W. 62) the counting agent of Shri Ram Ratan Gupta who was present gave no written complaint regarding the counting, either to him or to the Returning Officer, nor did he make any verbal complaint.

Taking all this evidence into consideration we are of the opinion that except for 5 or 6 servants of the hotel who came only to serve tea and did not stay any minute longer than was necessary for that purpose, no outsiders were allowed to be present at the time of counting. When counting was being done from the afternoon till 10 in the night, it was but natural that the workers should require a little refreshment. In our opinion it was never the intention of the legislature that the counting of votes should be done in a hermetically sealed apartment, shutting out all small amenities of life such as taking tea etc. and that no one except the persons mentioned in Rule 45 be allowed ingress even for few minutes to serve refreshments. In our view that would be taking a very harsh and superficial view of the rules which the framers never intended. Assuming for a moment that this was not in strict compliance with the rule, it has not been shown that the result of the election has been materially affected by its violation. We have, therefore, no hesitation in rejecting this allegation of the petitioners.

For the allegations in para. L(9) to the effect that—

“the Returning Officer did not follow the procedure laid down in section 58 of the R.P. Act after having found that the ballot boxes had been tampered with and seals thereof were not intact with its strings openly loose, seals broken and lost and the paper seals having no signature of various agents of the candidates and the Presiding Officers at two polling stations of Umaria circle when the counting took place at Rewa on 4th February 1952, Sidhi on 5th and 6th February, 1952, and Umaria on 9th February 1952, and thus rule 2(4) was not complied with”,

neither the names of the two polling stations of Umaria ‘Circle’ (which is not defined or located) where this irregularity is alleged to have happened, nor the number of ballot boxes and names of the candidates to whom they belonged, which might have been tampered with, or which might have their seals broken or were not otherwise in proper order, are given out at all. And the Returning Officer who could be the best person to depose on this point has also not been produced, but on the contrary reliance is placed on the oral testimony of P.W. 67 reinforced by documents namely (1) P.W. 58/6, (2) P.W. 58/7, (3) P.W. 62/1, (4) P.W. 62/2, (5) P.W. 79/1, (6) P.W. 79/2. Now P.W. 79 Sheo Balak Lal already referred to says nothing about any box having been tampered with or destroyed or lost, but only that some boxes were found with their lids open and were identified by their inner symbols which were present in all the boxes and the ballot papers in them were counted then and there. About the lac or paper seals or thread he could remember nothing. Of the documentary evidence Ex.P.W. 58/6 simply says about the boxes being apparently tampered with and in which prayer was made for ordering re-poll in Sidhi district and Mauganj tehsil of Rewa district only. About the end of para. 9 at page 2 of Ex.P.W. 58/7 which is a copy of the letter dated 14th February 1952, purporting to have been sent by Shri Ram Ratan Gupta to the Election Commission there is no doubt the very vague allegations about the two places namely that—

“from all these facts (presence of outsiders at the counting in the badly hit hall) the applicant verily believes that there was tampering with the ballot boxes and the ballot papers on a large scale”;



but no particulars or proof of such tampering was given either in that application or at the hearing. Mere belief is not proof. Ex.P.W. 62/1 is the copy of a letter No. 554/439/Elec. from the Returning Officer to Shri Ramanath Misra (P.W. 62) counting agent of Shri Ram Ratan Gupta in reply to the latter's application certified copy of which is dated Umaria 9th February, 1952, and marked Ex.P.W. 62/3 for re-counting only and not for re-polling in which not only charges of certain alleged irregularities are denied but it was also stressed that the procedure adopted at the counting was done so with the concurrence of all the counting agents and candidates present and that no objection was raised by any body at that time and that Mr. Misra too was satisfied with the procedure adopted by him. This document instead of helping the petitioners at all goes to expose the hollowness of other charge about the alleged irregularities at the counting. Ex.P.W. 79/1 is the original application dated 6th February 1952 of Shri Ramanath Misra (P.W. 62) from Camp Sidhi for a re-poll, made to the Returning Officer (who was the Deputy Commissioner) at 8-45 after he had left the counting hall as noted by Shri Govind Narain then U.D.C. on this application, and Ex.P.W. 79/2 is again his original application for re-counting from Shahdol dated 11th February 1952, to the Returning Officer, addressed to him at Shahdol to which a reply was sent by the Returning Officer on 11th February 1952 in letter No. 554/439/Elec. already discussed.

We have gone through the entire oral and documentary evidence mentioned above and do not find a word in allegation of any ballot box having been tampered with, destroyed or lost in which case only the Returning Officer was bound to order a fresh poll under section 58 of the Act. From all that is said by these witnesses and from a close scrutiny of the documents relied upon and discussed above, it is simply evident that some boxes had no outer symbols on them, some had their lids open, some had lac seals or the thread broken and some had the paper seals loose and strings visible from the windows when they were brought for the counting. This might have been due to a variety of causes other than the tampering thereof and not within the power or control of Returning Officer to avoid. This was most probably due to careless handling by the colliers or on account of ordinary wear and tear in the course of transport on trucks after the poll when brought for counting. But nowhere it is even faintly hinted that any box was tampered with, destroyed or lost which are essential conditions for ordering a re-poll. It is in evidence that in spite of these defects, there was no difficulty in correctly identifying these boxes with the help of their inner symbols which were present in all the boxes and in correctly assigning the ballot papers to the different candidates by making an immediate counting of the ballot papers inside them and by making proper entries in check slips and form No. 14 even though in so doing there was some slight deviation from the prescribed procedure but in which the candidates and their agents concurred. In our opinion these irregularities which were to some extent inevitable have not been shown by any evidence on the record to have affected the result of the election materially in any manner. Our finding on this para. 9 of list 'L' is also therefore in favour of respondent No. 1 and against the petitioners.

Lastly, the particulars given in para 10 of list 'L' where non-compliance of rule 46(5) is alleged and for which reliance is placed on the evidence tendered on behalf of the petitioners on the allegation in para L(9) above, the allegations are so vague and tacking in necessary particulars that it is not possible for us to pin the responsibility on the Returning Officer who has not been produced by the petitioners though he might have been easily available.

Para L(10) simply says—

"rule 46(5) was infringed in as much as the counting of ballot papers contained in the ballot boxes allotted to the candidate was not completed before the ballot papers contained in the boxes allotted, to other candidates was commenced. In fact the ballot boxes of various candidates were opened simultaneously contray to the rules and left open, thus a majority of ballot papers were mixed up, and attributed to wrong candidate".

As mentioned in the beginning counting was done at four places Umarla, Shahdol, Rewa and Sidhi on 14 days between 24th January and 10th February, 1952. There is in this para no mention of the names of the candidates, counting of whose ballot papers contained in the ballot boxes was not complete before the ballot papers contained in the boxes allotted to other candidates was commenced, nor is there any mention of the places where and the dates on which the irregularity was detected. In their absence we deem it proper to presume that official acts had been regularly performed and we therefore hold the allegations

in para 10 of list 'L' also as not proved. The ultimate result is that our finding on this whole issue is also in favour of respondent No 1 and against the petitioners.

**Issue No XIV**—To entitle the petitioners to the relief of declaration that respondent No 2 Shri Ram Ratan Gupta has been duly elected, it has got to be proved as required by section 101 of the Act (a) that in fact Shri Gupta received a majority of the valid votes, or (b) that but for the votes obtained by the returned candidate, Shri Bhagwan Dutta Shastri respondent No 1, by corrupt or illegal practices, Shri Gupta would have obtained a majority of the valid votes.

Now, not only has the respondent No 2, Shri Gupta not received a majority of the valid votes, but he has actually been defeated by an overwhelming majority of fifteen thousand and odd votes. And, of the six major corrupt practices that were said to have been committed by or on behalf of the respondent No 1, only two, *viz* undue influence and the use of vehicles and those too of a limited character and restricted only to a particular area have been proved against him. Of the minor corrupt practices, the one under section 124(5) of the Act, relating to the systematic appeal to voters on grounds of caste, race, religion etc similar, confined only to a certain area of the constituency has been proved. But no compliance with the provisions of the Constitution or of the Act, or of any Rules, or Orders made under the Act etc etc alleged by the petitioners as affecting materially the result of the election has been proved. There is no evidence on the record to show how many electors who would have otherwise not cast their votes for the respondent No 1 did actually cast their votes for him as a result of the exercise of his restricted form of undue influence. As for the use of vehicles there is evidence on the record that some electors only 4 of whom have been named, were carried in a truck by a worker of the Socialist Party, Shri Achhutanand, who himself was a candidate for a seat of the V P Legislative Assembly, for which the election was simultaneously being held. In view of the circumstances it cannot be said that but for the votes obtained by respondent No 1 by corrupt and illegal practices, Shri Gupta, respondent No 2, would have obtained a majority of the valid votes.

Realising this difficulty it was very strenuously argued by Sir Iqbal Ahmad and the learned Advocate General U P for the petitioners that considering the systematic appeal established to have been made on behalf of respondent No 1, to the electors on grounds of race, community, and religion, and the dire and open threats of injury held out to them it would be legitimate on our part to infer that this landslide in favour of respondent No 1, was in fact a mirage and no majority in the eye of the law as it was obtained by respondent No 1 by the exercise of a number of corrupt practices in an area which was very backward and easily susceptible to such practices. But we find on a reference to form No 14 that in this most backward area, *viz* Shahdol district where leaflets like P-3 were distributed and threats of excommunication were held out to the Gond residents of that area, the respondent No 2, Shri Gupta has actually led by a majority of about 6,000 votes. A chart was also put before us to show that respondent No 1, who was originally a mere dummy candidate has collectively secured more votes in this Parliamentary constituency which is composed of 14 V P Legislative Assembly Constituencies than the total number of votes secured by other successful members of his party from their respective constituencies of V P Legislative Assembly. And this is ascribed solely to the use of these corrupt practices on the part of respondent No 1. Another point which has been very forcibly put before us in this connection, is the fact that no recrimination has been filed in this case on behalf of respondent No 1, against respondent No 2. It is also argued that there is on record the admission of some of the witnesses for the respondent No 1, that the Jan Sangh and the Congress parties were actively helping Shri R R Gupta, respondent No 2, in this election, and in spite of this mighty force and combine, respondent No 1 was still elected with a heavy majority, it must be due only to the exercise of corrupt practices on an extensive scale. Another reason for the grant of this relief that was put forward by Sir Iqbal Ahmad was that nearly half the life of the present Parliament has already run out and considering the fact that feelings have run high in the constituency, there was an apprehension of a breach of the peace, if, as a result of the election of respondent No 1, being merely declared void, a fresh election is held. It was also suggested that considering the strain that a fresh election will cause on the resources of the Government, and the future contestants and the ordeal through which they again will have to pass, it was expedient that we should not stop at merely declaring the election of the respondent No 1 as void, but should go farther and make a declaration in favour of respondent No 2.

We have given all these points our most careful consideration as they are questions round which our minds have been revolving for considerable time. Our decision on this vexed question will necessarily be of great concern and consequence to the electorates, whose interest in this matter, in our opinion, are supreme, and must be taken into serious consideration. In the absence of factual and statistical information or basic data from authoritative sources about even the approximate number of votes obtained by the respondent No. 1, by the exercise of corrupt practices proved against him it would simply be hazarding speculation to say off hand that this huge majority was obtained by respondent No. 1 only by the exercise of those corrupt practices. As a guide on this difficult question our attention has been invited to a decision of the Gwalior Madhya Bharat Election Tribunal as reported at page 53 of the Gazette of India, Extraordinary, Part II, Section 3, dated New Delhi Monday, January 11th 1954, in which such a declaration was made in favour of respondent Nos. 6 and 7. But in that case the difference between the votes secured by the returned candidates and those in whose favour the declarations were made was comparatively slight, i.e., of 919 and 1563 only. Here the difference is huge, running into over fifteen thousands. It is no doubt correct that in the present case the constituency which is Parliamentary, is much larger than that dealt with by the Gwalior Tribunal which pertained to the Madhya Bharat Legislative Assembly. Yet the actual number of votes secured by the different candidates is not indicated in this decision; only the difference in votes secured by them is given. Each case has to be decided on its own peculiar facts and it would not be safe in our opinion, to jump at a conclusion without sufficient data, simply because another case has been decided in some peculiar way. The number of votes secured by various candidates in elections for the V. P. Legislative Assembly in quite different circumstances and context is no guide for anything in this election for a seat in the Parliament and the absence of any recrimination is not a sound plea for the grant of a declaration such as is prayed for in this petition. Similarly considerations of expediency and hardships to the parties and the Government are by themselves in our considered opinion, extraneous matters, quite outside the scope of the present inquiry. As remarked before, we have also to look to the wishes of the electorates and cannot arrogate to ourselves, what is their right, namely to elect a representative of their own free choice. We cannot further persuade ourselves to impose on them any one as their representative for such an august body as our Parliament. We have no crystal ball before us which would indicate how many electors succumbed to the clarion call of this so called 'Guru', the respondent No. 1, who has now strayed into politics, and therefore on a realistic approach to this problem we find no sure data on the record of this case to hold that but for the votes obtained by respondent No. 1, the returned candidate, by corrupt practices the respondent No. 2, Shri R. R. Gupta would have obtained a majority of valid votes, very heavy onus lay on the petitioners to entitle them to this relief, but we find that this onus has not been discharged in as much as neither the petitioners nor the respondent No. 2 who alone were most competent to depose in this behalf, have ever cared to enter the witness box in support of this plea. Taking all these facts into our consideration, it is our considered opinion that the respondent No. 2 cannot be declared as having been duly elected in case the election of respondent No. 1 is held to be void. We therefore decide this issue against the petitioners.

(Sd.) E. A. N. MUKARJI, *Chairman*

(Sd.) J. K. KAPOOR, *Member*.

(Sd.) U. S. PRASAD, *Member*.

The 26th April, 1954.

APPENDIX B  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL No. 204 OF 1955

**Bhagwan Datt Shastri—Appellant.**

*Versus*

**Ram Ratan Gupta and others—Respondents.**

CIVIL APPEAL No. 205 OF 1955

**Bhagwan Datt Shastri—Appellant.**

*Versus*

**Badri Narayan Singh and others—Respondents.**

## JUDGMENT

JAGANNADHADAS J.

These are two appeals by special leave against two orders of the Election Tribunal, Vindhya Pradesh at Rewa, dated the 26th April, 1954 and 31st May, 1954, which arise out of the election to the House of People (Lok Sabha) from Shahdol-Sidhi constituency of Vindhya Pradesh. It is a double member constituency, one being a general seat and the other being a reserved seat for a member of the scheduled tribes of Vindhya Pradesh. Twelve nominations were filed for the general seat and three for the reserved seat. The Returning Officer, after scrutiny, held only five out of the twelve nominations for the general seat to be valid and rejected the rest. Out of the three for the reserved seat, he declared only one, namely, that of one Randaman Singh, to be valid and rejected the rest. As a result thereof the said Randaman Singh was declared elected without contest to the reserved seat. Out of the five candidates whose nominations for the general seat were held valid, two subsequently withdrew in time. Accordingly the polling was held for the remaining three candidates in the various polling stations of the constituency on dates between the 11th and 19th January, 1952. These three candidates obtained votes as follows:—

Bhagwan Datt Shastri	...	...	71,589
Ram Ratan Gupta	..	...	56,585
Puranmal	...	...	34,990

Consequently Bhagwan Datt Shastri (hereinafter referred to as the appellant) was declared elected, and the same was published in the Gazette, dated the 14th February 1952. Thereupon two election petitions were filed, both on the 24th April, 1952, contesting the validity of the election. The first (Election Petition No. 185 of 1952) was filed by four voters of the constituency. The relief asked for was the setting aside of the election of the appellant on various grounds set out therein and the declaration of Ram Ratan Gupta as the validly elected candidate. The second petition (Election Petition No. 187 of 1952) was filed by three other voters of the same constituency and also prayed that the election of the appellant should be set aside. It asked also for a further relief *viz.* that the election of Randaman Singh the candidate returned unopposed for the reserved seat should also be set aside. In this petition the grounds alleged against the appellant's election were partly the same as those which were set out in the earlier petition. But there was added another substantial ground. This was that out of the nominations for the general seat which were rejected as being invalid on scrutiny by the Returning Officer, the rejections of the nominations of three candidates *viz.* Baboo Lal Udaniya, Deep Narain and Rajkishore Shukla, were erroneous in fact and in law and that as a result thereof the election—it was alleged—was materially affected. It was on the basis of this allegation that the relief asked for in this petition was not merely to set aside the election of the appellant but also for the setting aside of the entire election which would result in the unseating even of the reserved-seat candidate who was declared elected unopposed.

Common evidence was taken by consent of parties in both these petitions. Quite a large number of issues were raised in each of the petitions, some of which were common. A good many out of those issues were found in favour of the appellant. But only three of the issues in the first petition relating, respectively, to (1) undue influence, (2) use of vehicles for carrying voters to the polling station, and (3) appeal to voters on grounds of caste, race, community or religion, were found against the appellant. In the other petition, in addition to the findings against the appellant in respect of issues corresponding to these three, a further issue relating to the wrongful rejection of nomination papers and the election being materially affected thereby, was found against the appellant. As a result of all these findings, the election of the appellant was set aside. The additional relief asked for in the first petition *viz.* that Ram Ratan Gupta be declared elected was rejected as also the additional relief asked for in the second petition *viz.* that Randaman Singh was to be unseated. As a result, the Election Tribunal maintained the election of the reserved seat candidate but ordered a fresh election in the constituency for the general seat.

There is no question raised before us as to the correctness of the order of the Election Tribunal in so far as it upheld the election of the reserved seat candidate and rejected the relief asked for that Ram Ratan Gupta be declared elected.

The only common question therefore now raised in both the appeals is as to the correctness of the Tribunal's order in each of the election petitions setting aside the appellant's election. Since at this stage there is only one common question arising in both the appeals it is convenient to treat both the appeals together by a common judgment. This judgment accordingly disposes of both the appeals.

The findings of the Election Tribunal which resulted in the election of the appellant being set aside are the following.

1. Leaflets like Ex. P-3 were circulated in numerous villages of Shahdol district to the effect that every member belonging to the Gond community who would not vote for the appellant would be ex-communicated. Such distribution was by various red-capped workers who were members of the Socialist Party. The appellant having stood as a candidate on the ticket of the Socialist Party, they were virtually agents of the appellant. Thus the appellant was guilty of the major corrupt practice of undue influence under proviso (a) (i) and (ii) of section 123(2) of the Representation of the People Act, 1951 (Act XLIII of 1951) 'hereinafter referred to as the Act).

2. Leaflets like Ex. P-6, the later portion of which contained a clear and systematic appeal to the voters to vote (or refrain from voting) on grounds of caste, race, community or religion and contain a threat of injury, were widely distributed in the entire district of Sidhi and Tahsil of Mauganj in Rewa district by workers of the Socialist Party, who were virtually in the position of agents of the appellant. This constituted both a major corrupt practice under proviso (a) (i) and (ii) to section 123(2) and a minor corrupt practice under section 124(5) of the Act.

3. On the 11th January, 1952 (one of the polling dates) quite a number of voters from two villages in the constituency were brought to one of the polling stations by the use of one motor truck which belonged to Achutanand, a Socialist Party candidate for the same constituency of the State Legislative Assembly, polling for which also was going on simultaneously at the various polling stations. The voters were brought by Achutanand himself as well as by other Socialist Party workers. This was with the knowledge and connivance of the appellant and constituted a major corrupt practice within the meaning of section 123(6) of the Act.

4. The nominations of the three persons above mentioned, viz. (1) Baboo Lal Udaniya, (2) Deep Narain and (3) Rajkishore Shukla, were wrongly rejected and the rejection materially affected the result of the election.

The correctness of all these findings was vigorously canvassed before us both on the evidence and on the law relating thereto. It may be mentioned that each one of these, if held proved, was by itself enough to invalidate the election of the appellant. The first three of the above findings which fall under section 123 of the Act and are major corrupt practices would, if accepted, bring about the setting aside of the election by the Tribunal under section 100(2) (b) of the Act. The finding in respect of the fourth, if upheld, would bring about the voidness of the election under section 100(1) (a) of the Act.

So far as findings 1, 2 and 3 above are concerned, the questions involved are substantially questions of fact. But they have been argued before us with some instance on the ground that they were mixed up with questions of law. The main questions of law that were said to arise with reference to these three findings are:

- (1) As regards the alleged major corrupt practice based on Ex. P-3, the election petitions did not furnish the necessary particulars and therefore the enquiry and findings relating thereto was without jurisdiction.
- (2) As regards the corrupt practices based on Exs. P-3 and P-6, the main evidence is that of P.W. 73, and the appellant was not afforded a fair opportunity to rebut his evidence.
- (3) As regards all the three findings 1, 2 and 3, set out above no direct connection of the appellant is shown and the findings of the Tribunal are based on a special theory as to agency in election matters which is erroneous in fact and in law.

In order to appreciate the objections raised before us as regards the correctness of finding No. 4 above enumerated it is necessary to set out the grounds on which the respective nominations were rejected by the Returning Officer. They were as follows:

(a) Baboo Lal Udaniya was lawyer for the State Railway under the terms of a standard agreement (marked before the Tribunal as Ex. XA-2). His employment constituted an "office of profit under the State" and he was accordingly disqualified under Article 58(2) of the Constitution.

(b) The nomination paper of Deep Narain contained the following defect. The name of the constituency was shown as "Shahdol-Sidhi Manganj Constituency" instead of as "Shahdol-Sidhi Districts and Mauganj Tahsil of Rewa District" as specified in the Delimitation Order.

(c) The nomination of Rajkishore Shukla was defective as follows:

(i) The nomination paper was incomplete when the candidate signed it, the proposer and seconder having signed it later. (It may be mentioned that the nomination paper when presented to the Returning Officer admittedly contained all the three signatures).

(ii) The security deposit under section 34 of the Act was made by one Ram Gopal Varma and the receipt therefor filed with the nomination paper did not mention that the deposit was made on behalf of the candidate, Rajkishore Shukla. The Tribunal held that the rejection of the nominations on the above grounds was erroneous. It also held, following certain previous decisions of various Election Tribunals, that in such a situation there is a presumption that the result of the election is materially affected. Learned counsel for the appellant strongly contested the conclusions of the Tribunal in this behalf. So far as the grounds for rejection of the nominations of Deep Narain and Rajkishore Shukla are concerned, we are satisfied that the rejection by the Returning Officer was erroneous. Indeed we did not gather that learned counsel for the appellant seriously contested the Tribunal's view in this behalf. The main emphasis of the learned counsel on this part of the case was that the view taken by the Tribunal was erroneous in law in so far as it held (1) that Baboo Lal Udania held an "office of profit" and (2) that in cases where the nomination of a candidate has been wrongfully rejected there is no presumption that the result of the election is materially affected. Thus, out of the four findings of the Tribunal against the appellant above set out, three relate to alleged corrupt practices and the fourth relates to alleged wrongful rejection of nominations. It will be convenient to take up first, those relating to the alleged corrupt practices.

1. *Major corrupt practice relating to the wide distribution of pamphlets like Ex. P-3.*—A number of objections have been taken to the finding in this behalf. It is first contended that the allegation made in the election petition was extremely vague and that no particulars were furnished and that accordingly the Tribunal erred in allowing this allegation to be enquired into. The allegation in this behalf is contained in paragraph 12(g) of the Election Petition No. 185 of 1952 before the Election Tribunal which is as follows:

"The respondent No. 1 himself and through his agents, canvassers, workers and supporters committed the corrupt practice of undue influence in the form of (g) having circulated leaflets in numerous villages of Shahdol District that every elector belonging to the Gond community who would not vote for respondent No. 1 would be ex-communicated. The particulars are detailed in list B annexed hereto. (Copy of leaflet annexed hereto)."

It is pointed out that the particulars in list B relate only to sub-paragraphs (a) to (f) of paragraph 12 and that there were no particulars at all furnished as regards this particular allegation contained in sub-paragraph (g). It is also pointed out that objection was specifically taken in paragraph 4 of the written statement of the appellant which is as follows:

"No particulars have been given for the allegation contained in paragraph 12(g) hence it should be struck off."

In spite thereof, the matter was kept in suspense until the concluding stage as appears from the following passage in the judgment of the Tribunal.

"Lastly in para 12(g) it was simply alleged that leaflets were circulated in numerous villages of Shahdol district to the effect that every member belonging to the Gond community who would not vote for respondent No. 1 would be ex-communicated. No particulars whatsoever about

these leaflets, their signatures, or the villages where and the dates on which this form of undue influence was alleged to have been exercised has been given in any para of list B in spite of being so pointed out at the earliest stage by the respondent No. 1 in para 4 of his written statement wherein he pleaded for this allegation to be struck off on this score. At first, we were indeed inclined to strike off this para for want of necessary particulars and to shut out all evidence and arguments adduced thereon."

The decision of this Court in *Bhikaji Keshao Joshi v. Brijlal Nandlal Blyani* (1) and in particular the following passage at page 441 is brought to our notice.

"There can be no reasonable doubt that the requirement of full particulars is one that has got to be complied with, with sufficient fullness and clarification so as to enable the opposite-party fairly to meet them and that they must be such as not to turn the enquiry before the Tribunal into a rambling and roving inquisition."

ying on the above, learned counsel for the appellant urged that in the absence of adequate particulars as in this case, the Tribunal had no jurisdiction to admit evidence in this behalf or to give a finding thereupon. Now there can be no doubt that the requirement of full particulars is of paramount importance, in cases of this kind as in cases of the ordinary courts based on allegations of fraud or undue influence. But unlike the one in the above decision of this Court relied upon, in which the question that arose was as to the validity of an order dismissing the entire election petition on the preliminary ground of absence of particulars, the question in this case is different. This is a case where notwithstanding the absence of particulars, the evidence was allowed to be given and taken. The question in such a case would not be one of absence of jurisdiction but as to whether there has been any material prejudice occasioned by the absence of particulars. It is in that light that the validity of the objection raised by the appellant in this behalf before us has to be judged. It is, therefore, necessary to scrutinise the nature of the evidence on which this finding has been arrived at and to see whether the appellant had a fair opportunity of meeting it. The finding is based upon the printed pamphlet, Ex. P-3 and on the evidence of P.Ws. 10, 11, 12 and 73. Ex. P-3 is a pamphlet which, as the election petition shows, was an enclosure to that petition itself, when filed before the Election Commission. The Pamphlet itself purports to have been signed by three individuals Sukh Sen Raj Gond, Thakur Din Raj Gond, Bharosa Raj Gond, and shows on the face of it Kumar Printing Works, Daraganj, Prayag, as the printers. P.W. 73 is the Proprietor of Kumar Printing Works. It appears also from the record that on the 5th January 1953, a number of interrogatories were served on the appellant on behalf of the election petitioners out of which the following may be noticed.

"24. (a) Is it not a fact Sukhsen, Thakurdin and Bharosa Rajgonds were your workers and canvassers in the district of Shahdol?

(b) Was not Sukhsen a candidate for the Vindhya Pradesh Legislative Assembly from Pushaprajgarh and Kotma constituencies, officially set up by the Socialist Party, whose nominations were rejected?

(c) Was not Thakurdin a candidate officially set up by the Socialist Party from Beohari constituency for the Vindhya Pradesh Legislative Assembly?

(d) Was not Bharosa Raj Gond of village Asari dist Shadol a member of the Socialist Party and your worker in th

25. (a) Was not a leaflet entitled Submission to Sukhsen, Thakurdin and Bharosa above-S Gond tribe in Shadol district?

26. (a) Were not Dhanukram and Devdutta Ram of Sheorajpura Tahsil Mauganj men your workers in that Tehsil?

(b) Did they not issue the pamphlet Allahabad, and filed with the pet

To these questions the following answers were given on the 13th January, 1953.

- "24. (a) No.  
 (b) No knowledge.  
 (c) No personal knowledge.  
 (d) No  
 25. (a) No.  
 26 (a) No.  
 (b) No."

The actual recording of evidence commenced on the 13th April, 1953, subsequent to the exchange of these interrogatories and their answers. Since the finding with reference to this allegation is based, as above stated, on the pamphlet which is attached to the petition and on the evidence of witnesses whose names were specifically mentioned in the interrogatories, it is fairly clear that no prejudice would have been caused to the appellant by the non-furnishing of particulars in the very election petition itself. This objection, therefore, has no substance.

That Ex. P-3, contains matter of the kind which would come within the scope of section 123(2) of the Act has not been disputed. But it is urged that the evidence of the four witnesses relied upon is open to serious objections. This evidence is to the following effect. (1) The pamphlet Ex. P-3, was printed in the press of P.W. 73 with reference to a manuscript given to him by the appellant, Bhagwan Datt Shastri and another person, Joshi, both of whom placed the order with him for printing the pamphlets and that the original typed matter given to him contained the signature of the appellant and that the counter-foil No 178-A of his bill-book related to the bill relating to this job work in his press.

(2) Pamphlets of which Ex. P-3, was a specimen were distributed by red-capped Socialist Party workers in some villages of the constituency. The correctness of these findings has been seriously challenged. It was strenuously urged that the appellant was not given adequate opportunity to meet and rebut additional evidence taken from P.W. 73 at a later date with reference to an alleged mistake in his previous evidence as regards the date of the counter-foil above mentioned. We have been taken through the evidence relating to this alleged corrupt practice. It is enough to say that we are satisfied that there is no room for the grievance that adequate opportunity for rebutting the further evidence of P.W. 73 was not given. We are of the opinion that no sufficient reason is available for not accepting the conclusions of the Tribunal. The said conclusions are (1) that the pamphlet Ex. P-3, was distributed within the constituency by some persons, (2) that this pamphlet was got printed by the appellant himself, inasmuch as it was he that placed the order along with another person, Joshi, with the Proprietor of the printing press, P.W. 73, and (3) that the original of the pamphlet bore the appellant's signature when given to him for printing. On the facts so found, the Tribunal was justified in coming to the conclusion they did that the appellant must be taken to have been directly responsible for the distribution of these pamphlets and therefore for the commission of this item of corrupt practice. The further conclusion relating to this item that the distribution of pamphlet, Ex. P-3, was by Socialist Party Workers who on the evidence in the case were in the position of agents for the appellant has been also seriously challenged both as a fact and in law. On the facts above found, this was not essential so far as this item is concerned and will be noticed with reference to the third item, since the conclusion in this behalf is based on evidence which is virtually common to all the three items.

II. Major a  
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corrupt practices relating to the distribution of this is supported by the evidence of a large number of 48, 50, 51, 64, 66, 67 73, and 75. P.W. 73 who a noticed, has given exactly the same evidence as idence has been accepted in toto by the Tribunal. nesses above mentioned which has been accepted istribution of this pamphlet within the constituency arty. The attack on this finding arrived at by as that which related to the evidence connected Ex. P-3. That the last portion of Ex. P-6, has not been disputed. As regards this plaint that full particulars have not been



for any further challenge in regard to this item. In passing it may be noticed, that in so far as this is a minor corrupt practice it does not depend upon any question of the act complained of being done by the candidate directly or by his agent or with their connivance. But it has been held by the Tribunal—and not challenged before us that the matter in this pamphlet is also such as to fall within proviso (a) (i) and (ii) to section 123(2) of the Act constituting a major corrupt practice.

III. *The major corrupt practice relating to conveyance of voters in motor vehicles to a polling station.*—This has been seriously challenged before us. It falls within the scope of section 123(6) of the Act, viz, the hiring or procuring of any vehicle for the conveyance of electors to or from any polling station. This item formed the subject of issue No. 6 before the Tribunal. The allegations are contained in paragraph 14 of the petition and the particulars were furnished in list E annexed thereto. The main item of allegation relating to this matter is

F, in paragraph 2 of the list viz, on the 11th January, 1952 (one of the polling dates) a motor truck belonging to Achutanand brought electors from the villages of Amalak and Jurmaniya to Alhwa polling station (and that the electors were so brought by Achutanand of village Dehra (and his co-workers). Evidence was given on behalf of the petitioners in the election petition that the voters were being carried from some of the villages in the constituency to the polling station in motor trucks and that those trucks were of Achutanand who stood as a candidate for the Socialist Party for the local Assembly seat of the same constituency, for which the poll took place simultaneously in the same polling stations. Evidence was also given that these trucks belong to the said candidate Achutanand himself.

P.W. 68 stated as follows:

"I saw voters being carried from my tola neighbouring to Jurmaneya to the polling station Alhwa in motor trucks. Those trucks were of Shri Achutanand a candidate of Socialist Party who stood for Assembly seats. Bhagwan Datt Shastri was a candidate for Parliamentary seat ..... I saw Shri Achutanand and his workers sitting in that truck. I have seen Achutanand and his workers wearing red caps going in that truck."

P.W. 79 said as follows:

"I saw Shri Achutanand carrying voters to that station in motor truck. He did so 3 or 4 times. There were about 25 to 30 men of public carried in each trip including Shri Achutanand. The men carried in the truck were of villages Jurmaniya, Salwa and Amullakpur. These villages were within a mile from Alhwa. The motor truck used to stop near the polling booth in the school every time."

P.W. 75 said:

"I canvassed for Shri Achutanand who was Socialist candidate for Assembly and for Sri Bhagwan Dutt Shastri who was Socialist candidate for House of People. Shri Achutanand has got two motor trucks.

Achutanand himself has been examined as R.W. 21. While he denied carrying or conveying voters in a motor truck to the polling station on the date of the poll, he admitted that his brother Anjan Kumar and another Bhayya who lived in his village had trucks which were in use during the election and attempted to explain that those trucks were possibly hired by the Government to carry ballot boxes. The Tribunal took all this evidence into consideration and came to a definite finding that motor trucks belonging to Achutanand were used on the polling date for the conveyance of electors to the polling booth. On the evidence, this finding cannot be seriously challenged. But what is strongly urged is that the connection of the use of those trucks with the prospects of the candidate of the appellant is not established and that at any rate, the link of agency between the appellant and Achutanand along with his workers, who according to the evidence were responsible for the carrying of the voters to the polling booths has not at all been established. It is said that some theory of agency has been assumed on an erroneous view as to what constitutes agency for election purposes and it is urged that the assumption is erroneous in law. It is true that Election Courts have generally accepted a somewhat different standard of proof as

regards the question of agency in election matters. It is to be noticed that in the Act the word "agent" has been defined in section 79(a) as follows:—

" 'agent' includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election, is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate."

The questions as to the limits of the doctrine of agency in election matters and the exact scope and effect of the statutory definition of "agent" may require to be carefully considered by this Court when they become necessary in a proper case. These are important questions bearing on the whole structure of elections run on party lines and have not been adequately dealt with in this case. In the present case the finding arrived at by the Tribunal agent the appellant in this behalf is based on clear evidence, which may properly form the basis of a positive finding of agency. It is necessary for this purpose to understand the system of the present elections of which evidence has been given by a number of witnesses. R.W. 14 gives evidence as follows:—

"I have been a member of the Socialist Party since 1949. During the election I was General Secretary of the Mauganj Tehsil Socialist Party. At the time of elections I knew that Bhagwan Dutt Shastri was standing as Socialist candidate. Achutanand was one of the three candidates of the Socialist Party for the Assembly. I was one of those who were in charge of supervision of election campaign on behalf of the Socialist Party. Workers did not canvass for any candidate by name but they canvassed for the party candidates generally. Respondent No. 1 had no worker of his own in his individual capacity \* \* \* Ordinarily all expenses in connection with the election of party candidates were incurred out of the party fund."

Another witness on behalf of the appellant, R.W. 18, said as follows:—

"I am acquainted with the worker of the Socialist Party in my constituency. \* \* \* They were working for the party candidate as such and not for any one individually. Shastriji was a candidate for the Socialist Party."

Achutanand himself as R.W. 21 stated as follows:—

"In my constituency canvassing and propaganda used to be carried on party lines and not for any individual candidates. Respondent No. 1 had no worker or canvasser in my constituency. Respondent No. 1 got majority of votes because of the extensive propaganda carried on for the Socialist Party and its symbol 'Banyan tree'."

On this evidence it cannot be said that the Election Tribunal was not justified in holding that the carrying of the voters to the polling station in the trucks of Achutanand was with the connivance of the appellant who was a party candidate. That by itself would be enough to bring his case within section 123(6) of the Act. It is not unreasonable to impute to the candidate the knowledge of the work done by his party in this area and to impute the consequent connivance on his part. This appears from the fact that the return of the election expenses of the appellant at page 78 of the printed record shows the payment of some amount by the appellant to the Socialist Party for expenses and from the fact that the appellant on the very evidence of his own witnesses had no other independent workers of his own in this area. We are, therefore, satisfied that the finding of the Election Tribunal in this behalf is also well-grounded.

It follows that in our opinion there is no reason for interfering with the findings of the Election Tribunal relating to the three alleged corrupt practices set out above. On these findings the result arrived at by the Tribunal that the election of the appellant should be set aside by virtue of section 100(2) (b) of the Act must be sustained.

In this view it is unnecessary to deal with the findings of the Tribunal relating to the rejection of the nominations of Baboo Lal Udanla, Deep Narain and Rajkishore Shukla and to consider the two important questions of law raised therein.

In the result the appeals are dismissed with costs. There will be only one set of costs for both the appeals.

(Sd.) VIVIAN BOSE, J

(Sd.) B. JAGANNADHADAS, J.

(Sd.) BHUWANESH P. SINHA, J.

(Sd.) JAFER IMAM, J.

(Sd.) N. CHANDRESEKHARA AIYAR, J.

NEW DELHI.

The 17th February, 1956

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[No. 19/187/52-Elec. III/3845.]

By Order,

P. S. SUBRAMANIAM, Secy.

